



15 January 2019

Right to Know CLG

25 Herbert Place

Dublin 2

Re: FOI request refusing request FOI-2018-12093

To Whom It Concerns,

I refer to your request dated 13th December 2018 made under the Freedom of Information Act 2014, which was received on 13th December 2018 for records held by the Social Welfare Appeals Office. Your request sought:

"Please provide a copy of the SWAO procedures manual or similar records to provide instructions and guidance to SWAO adjudicators when they handle appeals.

Please provide the information electronically by email in its original format"

I, Bernie Mc Cormick, Higher Executive Officer have now made a final decision to grant your request on 15/01/2019.

You have sought access to the records by means of email and I consider this an appropriate form of access in this case. Accordingly, a copy of the records is attached to email as well as a copy of the schedule to these records.

The Social Welfare Appeals Office functions independently of the Minister for Employment Affairs and Social Protection and of the Department and is responsible for determining appeals against decisions in relation to social welfare entitlements. The role of the Appeals Officer is a quasi-judicial one.

The Social Welfare Appeals Office does not have a procedures manual. Appeals Officers must operate within the confines of the governing social welfare legislation in determining whether or not an appellant has an entitlement to a particular social welfare payment.

The formal training modules for Appeals Officers cover:

- The role and functions of an Appeals Officer
- The management of all aspects of the appeals process, including conducting an oral hearing
- The legal aspects of an Appeals Officer's role.



The slides used in these training modules are being provided in response to your FOI request.

Right of Appeal regarding the FOI Request

In the event you are not happy with my decision you can request a review of this matter by writing to Mr. Brian Duff, Social Welfare Appeals Office, D'Olier House, D'Olier Street, Dublin 2 or alternatively by sending an e-mail to brian.duff@welfare.ie. You should request the review of my decision, within 20 working days (4 weeks), of the date of this notification. However, a request for a review made outside of this timeframe may be permitted in appropriate circumstances.

A review in this instance is concerning FOI related matters **only**. The appeal will involve a complete reconsideration of the matter by a more senior member of staff in this Office.

A request for Internal Review should include a fee of €30. Payment should be made using one of the following options:

1. Directly by Electronic Funds Transfer (EFT) to:

Bank Name: BOI College Green, Dublin 2

Account Name: Non-Debt Recovery Account

BIC (Bank Identifier Code): BOFIE2D

IBAN (International Bank Account Number): IE86 BOFI 9000 1775 5558 28

Payment Reference No: FOI-YYYY-NNNN (i.e. FOI Reference Number as above).

2. By way of bank draft, money order, payable order or personal cheque made payable to The Accountant, Department of Employment Affairs and Social Protection.

Upon receipt of the fee, the internal review by Mr. Brian Duff can commence.

If you have any queries regarding this correspondence you can contact me by telephone at: (01) 6732846.

Yours sincerely,

Bernie Mc Cormick

Social Welfare Appeals Office

SCHEDULE OF RECORDS

Ref:FOI 2018-12093

Document No.	Brief description of record	No of Pages	Decision:	Exemptions: Section of Act	Reasons for Exemptions	Public Interest Considerations
1	The Functions of an Appeals Officer	35	Grant	N/A	N/A	N/A
2	Managing an appeal	69	Grant	N/A	N/A	N/A
2	The Legal Aspects of the Appeals Officer Role	71	Grant	N/A	N/A	N/A

Menu

▼ The Functions of an Appeals Officer

The Functions of an Appeals Officer...

Introduction to eLearning

Learning Objectives

Navigation Tips

Ending This Training

▼ Overview of the Appeals Office

Agenda

Overview of the Social Welfare A...

Roles in the Appeals Office

▼ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appe...

▼ Admin Support for Appeals Officers

Agenda

Administrative Structure

▼ The Journey of an Appeal

Agenda

Managing an Appeal

▼ Key Principles in Decision-Making

Agenda

Key Principles When Making Deci...

The Right to Fair Procedure/Natu...

Making a Correct Decision Inform...

In Summary

▼ Where to Find Support


Agenda

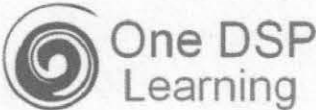
People

Technology


The Functions of an Appeals Officer




Resources






The Functions of an Appeals Officer


Social Welfare
Appeals
Office





← PREV

NEXT →

Menu

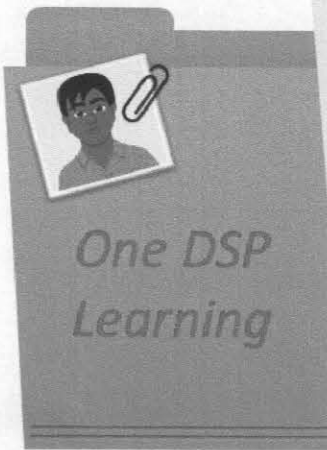
- ▼ The Functions of an Appeals Officer
 - The Functions of an Appeals Officer
 - Introduction to eLearning
 - Learning Objectives
 - Navigation Tips
 - Ending This Training
- ▼ Overview of the Appeals Office
 - Agenda
 - Overview of the Social Welfare A...
 - Roles in the Appeals Office
- ▼ The Role of the Appeals Officer
 - Agenda
 - The Powers of the Appeals Officer
 - Overview
 - Types of Decisions that are Appe...
- ▼ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ▼ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Dec...
 - The Right to Fair Procedure/Natu...
 - Making a Correct Decision Inform...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technolov

The Functions of an Appeals Officer

Resources

Introduction

Introduction to eLearning



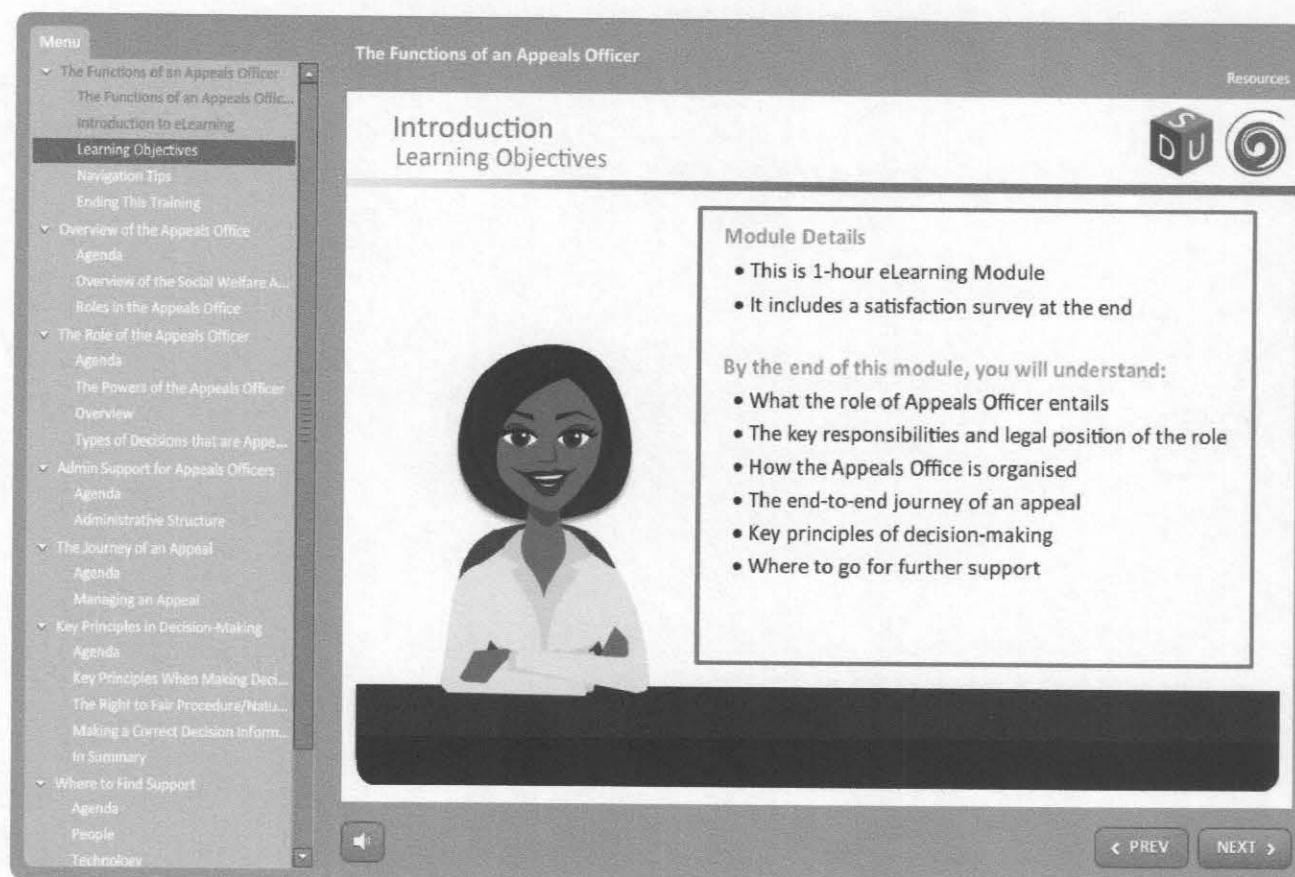
Welcome to the One DSP Learning Online Training.

We hope you enjoy the course.

If you have any queries about the Training please contact a member of SDU who will be happy to support you.

< PREV

NEXT >



Menu

▼ The Functions of an Appeals Officer

The Functions of an Appeals Officer

Introduction to eLearning

Learning Objectives

Navigation Tips

Ending This Training

▼ Overview of the Appeals Office

Agenda

Overview of the Social Welfare A...

Roles in the Appeals Office

▼ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appe...

▼ Admin Support for Appeals Officers

Agenda

Administrative Structure

▼ The Journey of an Appeal

Agenda

Managing an Appeal

▼ Key Principles in Decision-Making

Agenda

Key Principles When Making Deci...

The Right to Fair Procedure/Natu...

Making a Correct Decision Inform...

In Summary

▼ Where to Find Support

Agenda

People


Techniclov

The Functions of an Appeals Officer

Resources

Introduction


Navigation Tips



To navigate through the training please use the previous and next buttons at the bottom right of the screen.

After you complete a section/slide you will always be able to go back to this section/slide at a later point, by clicking on the appropriate point in the menu to the left of the screen.

Please note however that you cannot navigate forward to future points in this training using this menu.



< PREV

NEXT >

Menu

▼ The Functions of an Appeals Officer

The Functions of an Appeals Officer

Introduction to eLearning

Learning Objectives

Navigation Tips

Ending This Training

▼ Overview of the Appeals Office

Agenda

Overview of the Social Welfare A...

Roles in the Appeals Office

▼ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appe...

▼ Admin Support for Appeals Officers

Agenda

Administrative Structure

▼ The Journey of an Appeal

Agenda

Managing an Appeal

▼ Key Principles in Decision-Making

Agenda

Key Principles When Making Deci...

The Right to Fair Procedure/Natu...

Making a Correct Decision Inform...

In Summary

▼ Where to Find Support

Agenda

People

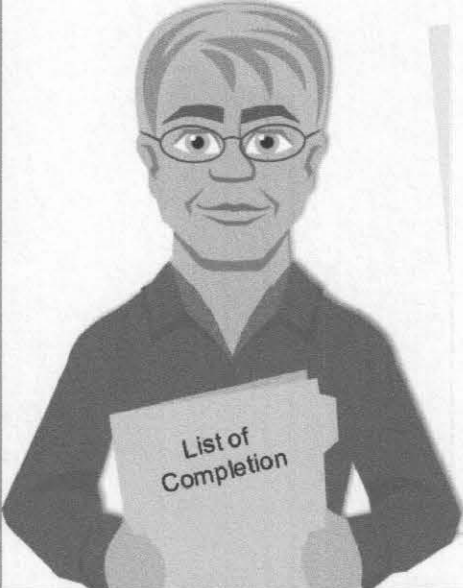
Technology

The Functions of an Appeals Officer

Resources

Introduction

Navigation Tips



You can end this training at any time by closing the window.

To be marked as complete you must finish the training in full and complete the evaluation at the end of the course.

< PREV

NEXT >

Menu

▶ The Functions of an Appeals Officer

▼ Overview of the Appeals Office

Agenda

Overview of the Social Welfare Appe...

Roles in the Appeals Office

▼ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appeals...

▼ Admin Support for Appeals Officers

Agenda

Administrative Structure

▼ The Journey of an Appeal

Agenda

Managing an Appeal

▼ Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

▼ Where to Find Support

Agenda

People

Technology

▼ Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

Where to Find Support

Recap and Conclusion

One DSP Learning

< PREV

NEXT >

Menu



- ▶ The Functions of an Appeals Officer
- ▼ Overview of the Appeals Office
 - Agenda
 - Overview of the Social Welfare Appeals Office
 - Roles in the Appeals Office
- ▼ The Role of the Appeals Officer
 - Agenda
 - The Powers of the Appeals Officer
 - Overview
 - Types of Decisions that are Appeals...
- ▼ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ▼ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

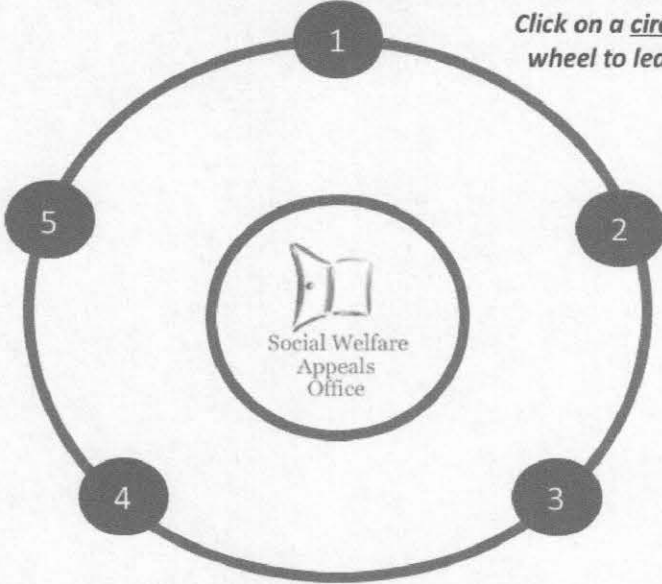
The Functions of an Appeals Officer


Resources

Overview of the Appeals Office

Overview of the Social Welfare Appeals Office





< PREV

NEXT >

Menu

▶ The Functions of an Appeals Officer

▼ Overview of the Appeals Office

Agenda

Overview of the Social Welfare Appe...

Roles in the Appeals Office

▼ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appeala...

▼ Admin Support for Appeals Officers

Agenda

Administrative Structure

▼ The Journey of an Appeal

Agenda

Managing an Appeal

▼ Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

▼ Where to Find Support

Agenda

People

Technology

▼ Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer


Resources

Overview of the Appeals Office


Roles in the Appeals Office

The Appeals Office comprises a Chief Appeals Officer (CAO), a Deputy Chief Appeals Officer (DCAO), over 40 Appeals Officers, an Office Manager and approximately 50 administrative support staff.


Click on the characters below to learn more about them.




Chief Appeals Officer




Deputy Chief Appeals Officer



Appeals Officers



Office Manager & Admin Support



◀ PREV

NEXT ▶

https://team/sites/onedspelearning/Shared%20Documents/The%20Functions%20of%20... 14-Jan-19

Menu

▶ The Functions of an Appeals Officer

▶ Overview of the Appeals Office

▼ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appealable

▼ Admin Support for Appeals Officers

Agenda

Administrative Structure

▼ The Journey of an Appeal

Agenda

Managing an Appeal

▼ Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural Justice

Making a Correct Decision Informed by the Facts

In Summary

▼ Where to Find Support

Agenda

People

Technology

▼ Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

Where to Find Support

Recap and Conclusion

One DSP Learning


< PREV

NEXT >


The Functions of an Appeals Officer

[Resources](#)

The Role of the Appeals Officer



The Powers of the Appeals Officer are clearly defined in Legislation



The Chief Appeals Officer (CAO), Deputy Chief Appeals Officer (DCAO) and the Appeals Officers (AOs) are appointed by the Minister of Social Protection in accordance with the Social Welfare Consolidation (SWC) Act 2005 (Sections 304-305).

Next

< PREVIOUS
NEXT >

Menu

- The Functions of an Appeals Officer
- Overview of the Appeals Office
- ▼ The Role of the Appeals Officer
 - Agenda
 - The Powers of the Appeals Officer
 - Overview
 - Types of Decisions that are Appeals...
- ▼ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ▼ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

The Role of the Appeals Officer

Overview

The role of the Appeals Officer involves:
The independent examination, hearing and adjudication of DSP appeals in an efficient and courteous manner, having regard to statutory provisions and administrative law

In addition to the legislation and the above definition of the role, the courts have given some **important guidance through case law** on the role and functions of an Appeals Officer.

Hover over each box below to learn more:

1 2 3 4

S. 304 - "The Minister may appoint such and so many of his or her officers ...to be appeals officer for the purposes of this Act..."

◀ PREV NEXT ▶

Menu

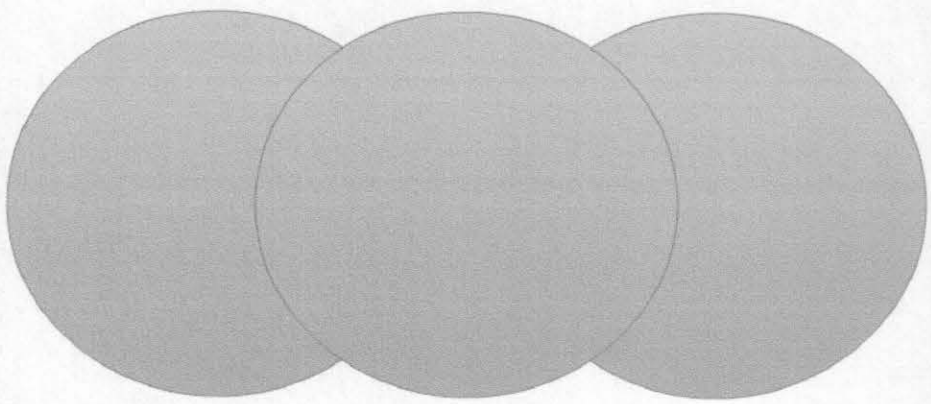
- The Functions of an Appeals Officer
- Overview of the Appeals Office
- The Role of the Appeals Officer
 - Agenda
 - The Powers of the Appeals Officer
 - Overview
 - Types of Decisions that are Appealable**
- Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural Justice
 - Making a Correct Decision Informed by the Law
 - In Summary
- Where to Find Support
 - Agenda
 - People
 - Technology
- Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

The Role of the Appeals Officer

Types of Decisions that are Appealable



Click on a circle above to learn more

< PREV

NEXT >

Menu

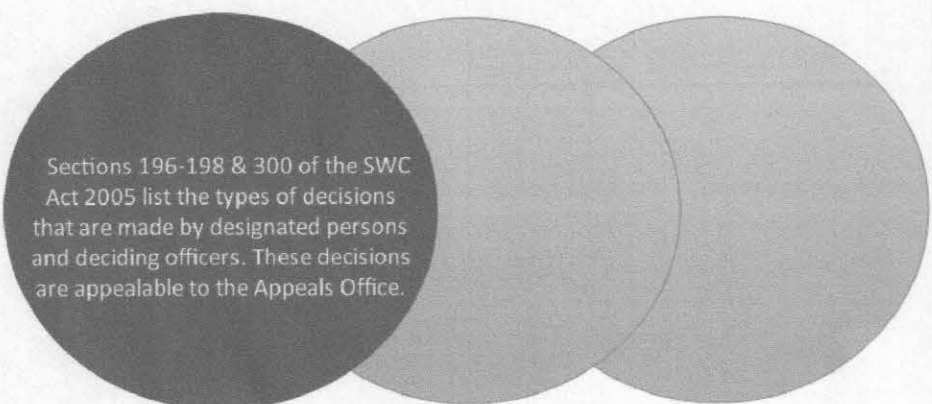
- The Functions of an Appeals Officer
- Overview of the Appeals Office
- ▼ The Role of the Appeals Officer
 - Agenda
 - The Powers of the Appeals Officer
 - Overview
 - Types of Decisions that are Appealable...
- ▼ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ▼ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

The Role of the Appeals Officer

Types of Decisions that are Appealable



Sections 196-198 & 300 of the SWC Act 2005 list the types of decisions that are made by designated persons and deciding officers. These decisions are appealable to the Appeals Office.

Click on a circle above to learn more

< PREV

NEXT >

Menu

➤ The Functions of an Appeals Officer

➤ Overview of the Appeals Office

✓ The Role of the Appeals Officer

Agenda

The Powers of the Appeals Officer

Overview

Types of Decisions that are Appealable...

➤ Admin Support for Appeals Officers

Agenda

Administrative Structure

➤ The Journey of an Appeal

Agenda

Managing an Appeal

➤ Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

➤ Where to Find Support

Agenda

People

Technology

➤ Recap and Conclusion

Agenda

Learning Objectives

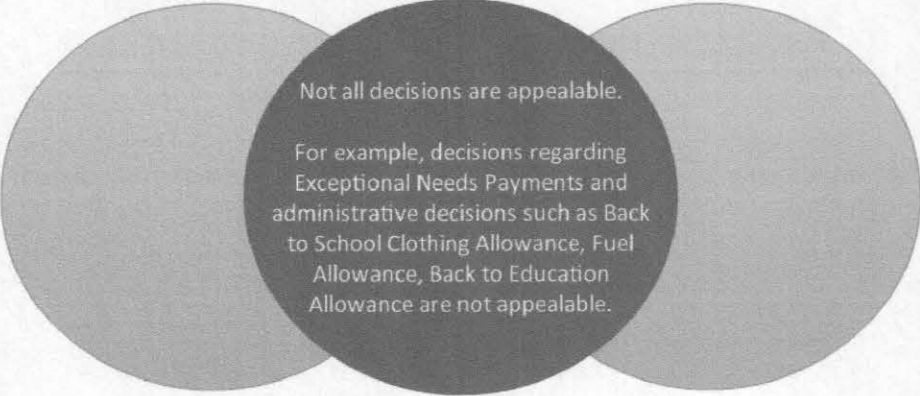
Next Steps

The Functions of an Appeals Officer

Resources

The Role of the Appeals Officer


Types of Decisions that are Appealable



Not all decisions are appealable.

For example, decisions regarding
Exceptional Needs Payments and
administrative decisions such as Back
to School Clothing Allowance, Fuel
Allowance, Back to Education
Allowance are not appealable.

Click on a circle above to learn more



◀ PREV

NEXT ▶



https://team/sites/onedspelearning/Shared%20Documents/The%20Functions%20of%20... 14-Jan-19

Menu

- ▶ The Functions of an Appeals Officer
- ▶ Overview of the Appeals Office
- ▼ The Role of the Appeals Officer
 - Agenda
 - The Powers of the Appeals Officer
 - Overview
- ▼ Types of Decisions that are Appealable...
- ▼ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ▼ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps


The Functions of an Appeals Officer

Resources




The Role of the Appeals Officer

Types of Decisions that are Appealable



Click [here](#) for a list of Schemes which come within the jurisdiction of the Social Welfare Appeals Office.

Click on a circle above to learn more



◀ PREV

NEXT ▶

Menu

- The Functions of an Appeals Officer
- Overview of the Appeals Office
- The Role of the Appeals Officer
- ▼ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ▼ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

Where to Find Support

Recap and Conclusion

One DSP Learning

◀ PREV

NEXT ▶

Menu

- ✓ The Functions of an Appeals Officer
- ✓ Overview of the Appeals Office
- ✓ The Role of the Appeals Officer
- ✓ Admin Support for Appeals Officers
 - Agenda
 - Administrative Structure
- ✓ The Journey of an Appeal
 - Agenda
 - Managing an Appeal
- ✓ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ✓ Where to Find Support
 - Agenda
 - People
 - Technology
- ✓ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Admin Support for Appeals Officers

Administrative Structure of the Appeals Office

Administration:

The primary role of the SWAO administration section is to support Appeals Officers (including the Chief and Deputy Chief Appeals Officers) in carrying out their duties. A computer system (INGRES) is used to track appeals through the various stages of the process.

There are 6 Sections within the Administration office

Please click on each section to learn more

Registration

Corporate Services

Control

Admin Office

Correspondence

Decisions

Scheduling & Planning (S&P)

◀ PREV

NEXT ▶

<https://team/sites/onedspelearning/Shared%20Documents/The%20Functions%20of%20...> 14-Jan-19

Menu

> The Functions of an Appeals Officer

> Overview of the Appeals Office

> The Role of the Appeals Officer

> Admin Support for Appeals Officers

> The Journey of an Appeal

Agenda

Managing an Appeal

> Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

> Where to Find Support

Agenda

People

Technology

> Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

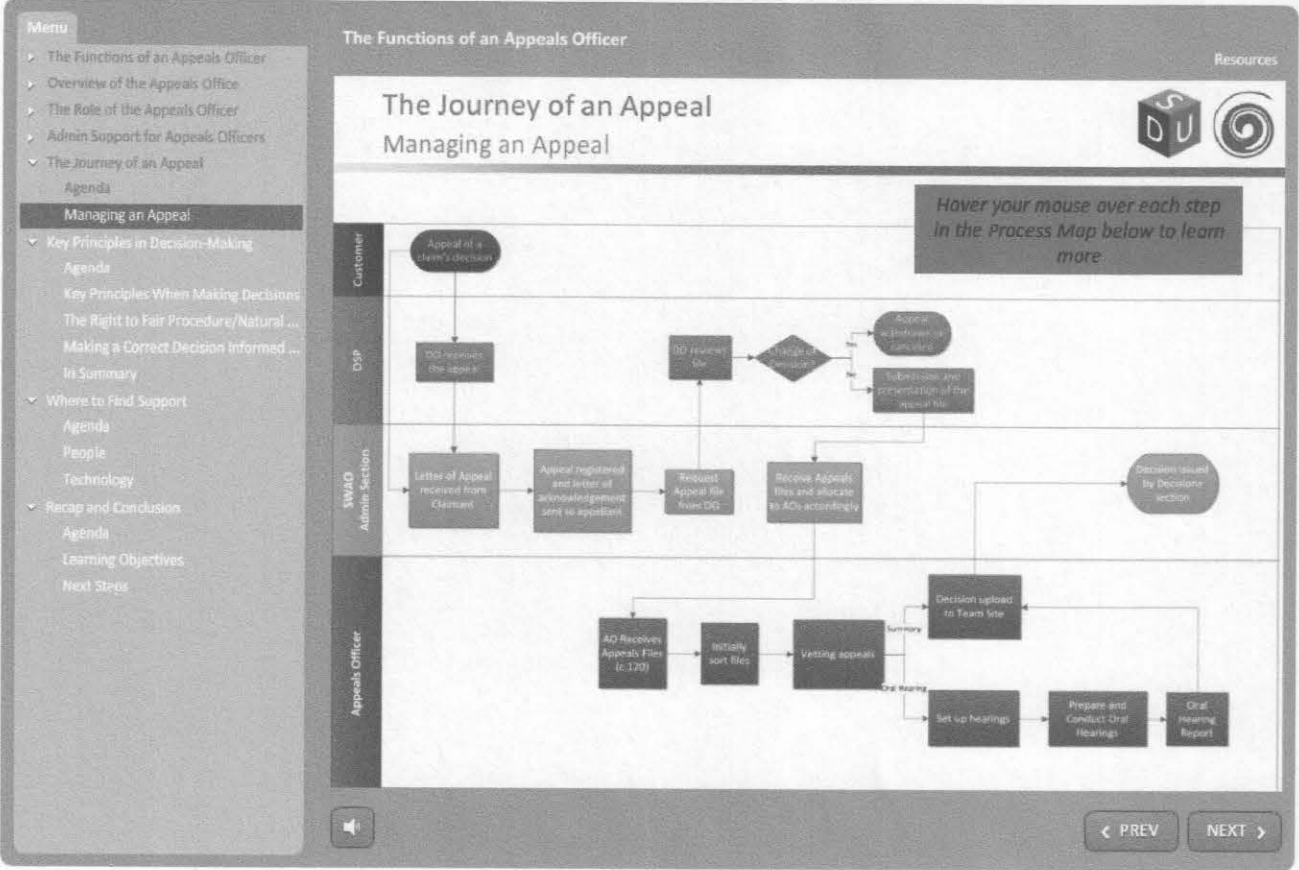
Where to Find Support

Recap and Conclusion

One DSP Learning

< PREV

NEXT >



Menu

> The Functions of an Appeals Officer

> Overview of the Appeals Office

> The Role of the Appeals Officer

> Admin Support for Appeals Officers

> The Journey of an Appeal

> Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

> Where to Find Support

Agenda

People

Technology

> Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

Where to Find Support

Recap and Conclusion

One DSP Learning

< PREV

NEXT >

Menu

> The Functions of an Appeals Officer

> Overview of the Appeals Office

> The Role of the Appeals Officer

> Admin Support for Appeals Officers

> The Journey of an Appeal

> Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

> Where to Find Support

Agenda

People

Technology

> Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Key Principles in Decision-Making

Always remember these key principles when making your decisions:

Decisions by public bodies, which impact on the lives of the general public, whatever their outcome, must adhere to a process which renders the decision fair, reasonable, legitimate and open to scrutiny

Click here for more information

< PREV

NEXT >

The screenshot shows a web application interface. On the left is a vertical menu with the following items: 'The Functions of an Appeals Officer', 'Overview of the Appeals Office', 'The Role of the Appeals Officer', 'Admin Support for Appeals Officers', 'The Journey of an Appeal', 'Key Principles in Decision-Making' (which is expanded to show 'Agenda', 'Key Principles When Making Decisions', 'The Right to Fair Procedure/Natural ...', and 'Making a Correct Decision Informed ... In Summary'), 'Where to Find Support' (expanded to show 'Agenda', 'People', and 'Technology'), 'Recap and Conclusion' (expanded to show 'Agenda', 'Learning Objectives', and 'Next Steps'), and 'Next Steps'. The main content area is titled 'The Functions of an Appeals Officer' and 'Resources'. It features a section titled 'Key Principles in Decision-Making' with the text 'Always remember these key principles when making your decisions:'. Below this are three rounded rectangular boxes containing the following text:

- Decisions by public bodies, which impact on the lives of the general public, whatever their outcome, must adhere to a process which renders the decision fair, reasonable, legitimate and open to scrutiny
- Each decision should be based on the facts as they currently exist, not what has happened in the past or is likely to happen in the future
- The duty of an AO is laid upon him/ her by the Oireachtas and s/he is required to perform it freely and fairly (*McLoughlin v Minister for Social Welfare [1958]*)

At the bottom right of the main content area are buttons for '< PREV' and 'NEXT >'. A small speaker icon is located at the bottom left of the main content area.

The screenshot shows an e-learning interface. On the left is a 'Menu' sidebar with a tree view. The main content area is titled 'The Functions of an Appeals Officer' and 'Key Principles in Decision-Making'. It features a cartoon character of a man in a shirt and tie, a text box with two paragraphs, a 'Next' button, and navigation controls at the bottom.

Menu

- ▶ The Functions of an Appeals Officer
- ▶ Overview of the Appeals Office
- ▶ The Role of the Appeals Officer
- ▶ Admin Support for Appeals Officers
- ▶ The Journey of an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...**
 - Making a Correct Decision Informed ...
 - In Summary
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Key Principles in Decision-Making
The Right to fair procedures/Natural Justice

The SWAO must operate a fair and impartial process, observing the principles of fair procedures and natural justice.

The right to fair procedures and natural justice is guaranteed under the constitution.

Next

< PREV NEXT >

Menu



- > The Functions of an Appeals Officer
- > Overview of the Appeals Office
- > The Role of the Appeals Officer
- > Admin Support for Appeals Officers
- > The Journey of an Appeal
- > Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- > Where to Find Support
 - Agenda
 - People
 - Technology
- > Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Key Principles in Decision-Making

Making a Correct Decision Informed by the Legislation

Keep in mind the three following points when making a decision:

Click each box below to learn more:

1

2

3

< PREV

NEXT >

Menu

▶ The Functions of an Appeals Officer

▶ Overview of the Appeals Office

▶ The Role of the Appeals Officer

▶ Admin Support for Appeals Officers

▶ The Journey of an Appeal

▶ Key Principles in Decision-Making

Agenda

Key Principles When Making Decisions

The Right to Fair Procedure/Natural ...

Making a Correct Decision Informed ...

In Summary

▶ Where to Find Support

Agenda

People

Technology

▶ Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Key Principles in Decision-Making

Making a Correct Decision Informed by the Legislation

Keep in mind the three following points when making a decision:

Click each box below to learn more:

1

2

3

Question for Consideration

In considering an appeal, the Appeals Officer will normally confine their examination to the grounds for the disallowance as set out in the DO's decision. It is a rehearing of those grounds based on the relevant legislation and the evidence presented and **not** a review of the DO's decision

◀ PREV

NEXT ▶

<https://team/sites/onedspelearning/Shared%20Documents/The%20Functions%20of%20...> 14-Jan-19

The screenshot shows a web application interface. On the left is a 'Menu' sidebar with a tree structure of topics. The main content area is titled 'The Functions of an Appeals Officer' and 'Key Principles in Decision-Making'. It includes a sub-header 'Making a Correct Decision Informed by the Legislation' and two logos: a 'DU' cube and a circular swirl icon. The content area contains a box with the text 'Keep in mind the three following points when making a decision:' followed by 'Click each box below to learn more:'. Below this are three numbered boxes (1, 2, 3) and a large text box titled 'Evidence to be Considered' which contains a paragraph about relevant evidence. At the bottom right are 'PREV' and 'NEXT' buttons.

Menu

- The Functions of an Appeals Officer
- Overview of the Appeals Office
- The Role of the Appeals Officer
- Admin Support for Appeals Officers
- The Journey of an Appeal
- ✓ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- ✓ Where to Find Support
 - Agenda
 - People
 - Technology
- ✓ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Key Principles in Decision-Making

Making a Correct Decision Informed by the Legislation

Keep in mind the three following points when making a decision:

Click each box below to learn more:

- 1
- 2
- 3

Evidence to be Considered

In considering the question at issue, the Appeals Officer will have regard to **all relevant evidence** including the documentary material, the grounds of appeal including any documentation submitted and/or oral evidence at the hearing.

◀ PREV NEXT ▶

The screenshot shows a web application interface. On the left is a vertical menu with the following items: 'The Functions of an Appeals Officer', 'Overview of the Appeals Office', 'The Role of the Appeals Officer', 'Admin Support for Appeals Officers', 'The Journey of an Appeal', 'Key Principles in Decision-Making' (which is expanded to show 'Agenda', 'Key Principles When Making Decisions', 'The Right to Fair Procedure/Natural ...', and 'Making a Correct Decision Informed ...'), 'Where to Find Support' (expanded to 'Agenda', 'People', 'Technology'), and 'Recap and Conclusion' (expanded to 'Agenda', 'Learning Objectives', and 'Next Steps'). The main content area is titled 'The Functions of an Appeals Officer' and 'Key Principles in Decision-Making: Making a Correct Decision Informed by the Legislation'. It features a 'Resources' section with 'DU' and a circular logo. A central box states: 'Keep in mind the three following points when making a decision: Click each box below to learn more:'. Below this are three numbered boxes (1, 2, 3). Box 1 is titled 'Application of Legislation' and contains the text: 'The conditions underlying entitlement to benefit are contained in provisions of **social welfare legislation** and the Appeals Officer **must apply this legislation** to his/her finding of the facts in determining the question under appeal. Statutory Interpretation can occur, however in making findings of fact based on particular circumstances, AOs should strive for consistency in their interpretation of the law (AO Team site & SWAO annual report case studies)'. A button 'Read more on Application of Legislation' is at the bottom right of the text. At the bottom of the main content area are navigation buttons: '< PREV' and 'NEXT >'. A small speaker icon is also present at the bottom left of the main content area.

Menu

- > The Functions of an Appeals Officer
- > Overview of the Appeals Office
- > The Role of the Appeals Officer
- > Admin Support for Appeals Officers
- > The Journey of an Appeal
- > Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
- > Where to Find Support
 - Agenda
 - People
 - Technology
- > Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Key Principles in Decision-Making

Making a Correct Decision Informed by the Legislation

Keep in mind the three following points when making a decision:

Click each box below to learn more:

1

2

3

Application of Legislation

The conditions underlying entitlement to benefit are contained in provisions of **social welfare legislation** and the Appeals Officer **must apply this legislation** to his/her finding of the facts in determining the question under appeal. Statutory Interpretation can occur, however in making findings of fact based on particular circumstances, AOs should strive for consistency in their interpretation of the law (AO Team site & SWAO annual report case studies).

Read more on Application of Legislation

< PREV

NEXT >

The screenshot shows a web application interface. On the left is a 'Menu' sidebar with a tree structure of topics. The main content area is titled 'The Functions of an Appeals Officer' and 'Key Principles in Decision-Making In Summary'. It features a large box with a key principle, a large downward arrow, and a prompt to click the arrow for more information. At the bottom right are 'PREV' and 'NEXT' navigation buttons.

Menu

- ▶ The Functions of an Appeals Officer
- ▶ Overview of the Appeals Office
- ▶ The Role of the Appeals Officer
- ▶ Admin Support for Appeals Officers
- ▶ The Journey of an Appeal
- ▼ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary**
- ▼ Where to Find Support
 - Agenda
 - People
 - Technology
- ▼ Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Key Principles in Decision-Making
In Summary

The AO should approach the appeal by considering the evidence in the context of the **governing legislation**, rather than DSP guidelines (which are not binding).

Click on the arrow to reveal more information

< PREV NEXT >

The screenshot shows a web application interface. On the left is a 'Menu' sidebar with a tree structure. The main content area is titled 'The Functions of an Appeals Officer' and 'Key Principles in Decision-Making In Summary'. It contains three text boxes connected by downward arrows. The top box states that the AO should approach the appeal by considering evidence in the context of governing legislation, not DSP guidelines. The middle box states that facts should be established from the evidence, and the AO should decide based on them. The bottom box states that appeal decisions should be objective, independent, impartial, based on facts, and underpinned by natural justice. The interface includes a 'Resources' section with 'DSU' and 'S' logos, a speaker icon, and 'PREV' and 'NEXT' buttons.

Menu

- The Functions of an Appeals Officer
- Overview of the Appeals Office
- The Role of the Appeals Officer
- Admin Support for Appeals Officers
- The Journey of an Appeal
- ✓ Key Principles in Decision-Making
 - Agenda
 - Key Principles When Making Decisions
 - The Right to Fair Procedure/Natural ...
 - Making a Correct Decision Informed ...
 - In Summary
- Where to Find Support
 - Agenda
 - People
 - Technology
- Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Key Principles in Decision-Making In Summary

The AO should approach the appeal by considering the evidence in the context of the **governing legislation**, rather than DSP guidelines (which are not binding).

From the evidence, the facts of the case should be established. The AO then should decide on the basis of the established facts.

Appeal decisions should be objective, independent, impartial, based on facts and underpinned by natural justice.

◀ PREV NEXT ▶

Menu

- The Functions of an Appeals Officer
- Overview of the Appeals Office
- The Role of the Appeals Officer
- Admin Support for Appeals Officers
- The Journey of an Appeal
- Key Principles in Decision-Making
- Where to Find Support
- Agenda
- People
- Technology
- Recap and Conclusion
 - Agenda
 - Learning Objectives
 - Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

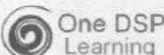
Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

Where to Find Support

Recap and Conclusion



← PREV

NEXT →

Menu

> The Functions of an Appeals Officer

> Overview of the Appeals Office

> The Role of the Appeals Officer

> Admin Support for Appeals Officers

> The Journey of an Appeal

> Key Principles in Decision-Making

> Where to Find Support

Agenda

People

Technology

> Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Where to Find Support

People

Your AO colleagues who are doing the same job as you are available and willing to advise and support you at all stages of the process! Don't be afraid to reach out and ask for help, either on a 1-1 basis or through the SWAO teamsite forum.

The SWAO holds a twice yearly conference with all AOs, the CAO and DCAO, to share knowledge, promote consistency and discuss topical issues.

The CAO and DCAO are available for 1-1 support and guidance

The Office Manager and administrative support teams are available to support and assist Appeals Officers in the administrative aspects of their role e.g. scheduling Oral hearings and liaising with appellants.

< PREV

NEXT >

<https://team/sites/onedspelearning/Shared%20Documents/The%20Functions%20of%20...> 14-Jan-19

Menu

➤ The Functions of an Appeals Officer

➤ Overview of the Appeals Office

➤ The Role of the Appeals Officer

➤ Admin Support for Appeals Officers

➤ The Journey of an Appeal

➤ Key Principles in Decision-Making

➤ Where to Find Support

Agenda

People

Technology

➤ Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

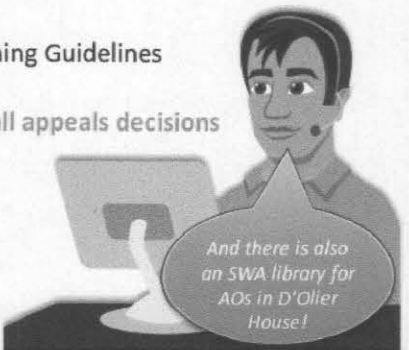
Resources

Where to Find Support

Technology

The **SWAO Teamsite** is the key platform supporting AOs in their work. It is used every day, to research, record and communicate day to day activity. It contains:

1. Links to:
 - The Running Consolidation of the 2005 Social Welfare Act
 - The Running Consolidation of key Social Welfare Regulations (Claims & Payments, OIB, SWA and Insurability)
 - EU law
 - Decisions Advisory Office website (containing Guidelines)
2. An extensive Reports Library recording all appeals decisions
3. Sections to share information about:
 - Specific Appeal Cases of Interest
 - Significant Court judgements
4. An AO Team Discussion forum



And there is also an SWA library for AOs in D'Olier House!

< PREV

NEXT >

Menu

➤ The Functions of an Appeals Officer

➤ Overview of the Appeals Office

➤ The Role of the Appeals Officer

➤ Admin Support for Appeals Officers

➤ The Journey of an Appeal

➤ Key Principles in Decision-Making

➤ Where to Find Support

➤ Recap and Conclusion

Agenda

Learning Objectives

Next Steps

The Functions of an Appeals Officer

Resources

Agenda

Introduction

Overview of the Appeals Office

The Role of the Appeals Officer

Admin Support for Appeals Officers

The Journey of an Appeal

Key Principles in Decision-Making

Where to Find Support

Recap and Conclusion

One DSP Learning

< PREV

NEXT >

Menu

➤ The Functions of an Appeals Officer

➤ Overview of the Appeals Office

➤ The Role of the Appeals Officer

➤ Admin Support for Appeals Officers

➤ The Journey of an Appeal

➤ Key Principles in Decision-Making

➤ Where to Find Support

▼ Recap and Conclusion

Agenda

Learning Objectives


Next Steps

The Functions of an Appeals Officer

Resources

Recap and Conclusion


Learning Objectives



We have discussed main topics that will provide you with an introduction to the Role of the Appeals Officer.

Now you are able to understand:

- What the role of Appeals Officer entails
- The key responsibilities and legal position of the role
- How the Appeals Office is organised
- The end-to-end journey of an appeal
- Key Principles of Decision-making
- Where to go for further support



< PREV

NEXT >

<https://team/sites/onedspelearning/Shared%20Documents/The%20Functions%20of%20...> 14-Jan-19

The screenshot shows a web-based training module interface. On the left is a vertical menu with the title 'Menu' and a list of topics: 'The Functions of an Appeals Officer', 'Overview of the Appeals Office', 'The Role of the Appeals Officer', 'Admin Support for Appeals Officers', 'The Journey of an Appeal', 'Key Principles in Decision-Making', 'Where to Find Support', 'Recap and Conclusion', 'Agenda', 'Learning Objectives', and 'Next Steps'. The 'Next Steps' item is highlighted. The main content area has a header 'The Functions of an Appeals Officer' and a sub-header 'Recap and Conclusion Next Steps'. In the top right corner of the main area are two icons: a 'DU' logo and a circular logo with a stylized 'S'. The main content area contains a bulleted list of four points. At the bottom of the main content area is a large button with the text 'Click here to complete a short evaluation survey on this training module'. At the bottom of the interface are three controls: a speaker icon for audio, and two buttons labeled '< PREV' and 'NEXT >' for navigation.

Menu

- ▶ The Functions of an Appeals Officer
- ▶ Overview of the Appeals Office
- ▶ The Role of the Appeals Officer
- ▶ Admin Support for Appeals Officers
- ▶ The Journey of an Appeal
- ▶ Key Principles in Decision-Making
- ▶ Where to Find Support
- ▶ Recap and Conclusion
- ▶ Agenda
- ▶ Learning Objectives
- ▶ Next Steps

The Functions of an Appeals Officer

Resources

Recap and Conclusion

Next Steps

- We hope you enjoyed this overview to the role of the Appeals Officer.
- In the coming weeks, you will receive more in-depth training on the role of an Appeals Officer, the process for managing an appeal and how to conduct oral hearings.
- In the interim, please take time to explore and familiarise yourself with the SWAO teamsite.
- And finally, remember your AO colleagues are here to support you and share their knowledge.

[Click here to complete a short evaluation survey on this training module](#)

< PREV NEXT >



The Legal Aspects of the Appeals Officer Role





Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion

Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion

Mobile Phones

- Please ensure your mobile is turned off or on silent mode

Fire Alarm

- In the unlikely event that the alarm should sound, please leave the building in an orderly fashion. **Please exit the training room to the lift lobby. DO NOT USE THE LIFT.**

***The stairs to the left of the lifts will lead you to the exit on the ground floor. You should then make your way to the assembly point at the Screen Cinema – across the road, and to the left of Pearse St. Garda Station.**

Toilets

- Toilets are located in the lift lobby.
- Wheelchair accessible toilets are located on Floor 2.

Breaks

- Morning break at approx. 10:40
- Lunch break at approx. 13:00
- Afternoon tea at approx. 15:00



By the end of this module, we expect participants to be able to:

- Understand the full legal context within which the Appeals Officer operates,
- Understand the quasi-judicial role of the Appeals Officer,
- Understand the various sources of law applying to the role of the Appeals Officer,
- Explain the concepts of fair procedures and natural justice,
- Understand the different forms and types of evidence in decision-making,
- Effectively make and record decisions reflecting the evidence and applicable legislation,
- Understand the judicial review process and its implications for Appeals Officers.

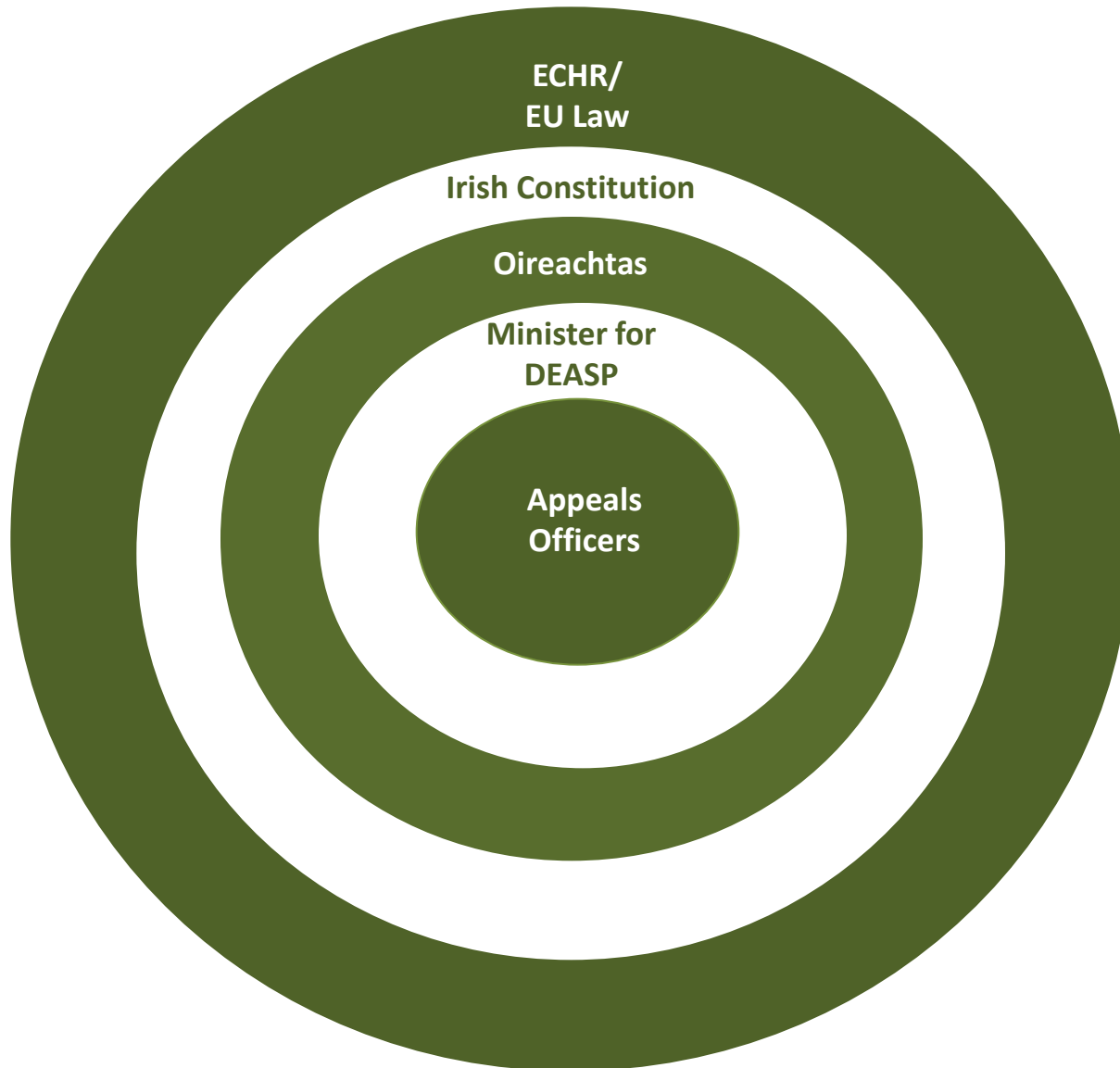
- Appeals Officers work within the Irish legal system, and within the broader EU legal system (EU Regulations and Directives in relation to social security),
- The powers invested in the AO derive from social welfare legislation enacted by the Oireachtas (Social Welfare Consolidation Act 2005),
- No civil servant can exercise the powers of an AO until they are appointed to do so by the Minister (Section 304 of the SW Consolidation Act 2005).

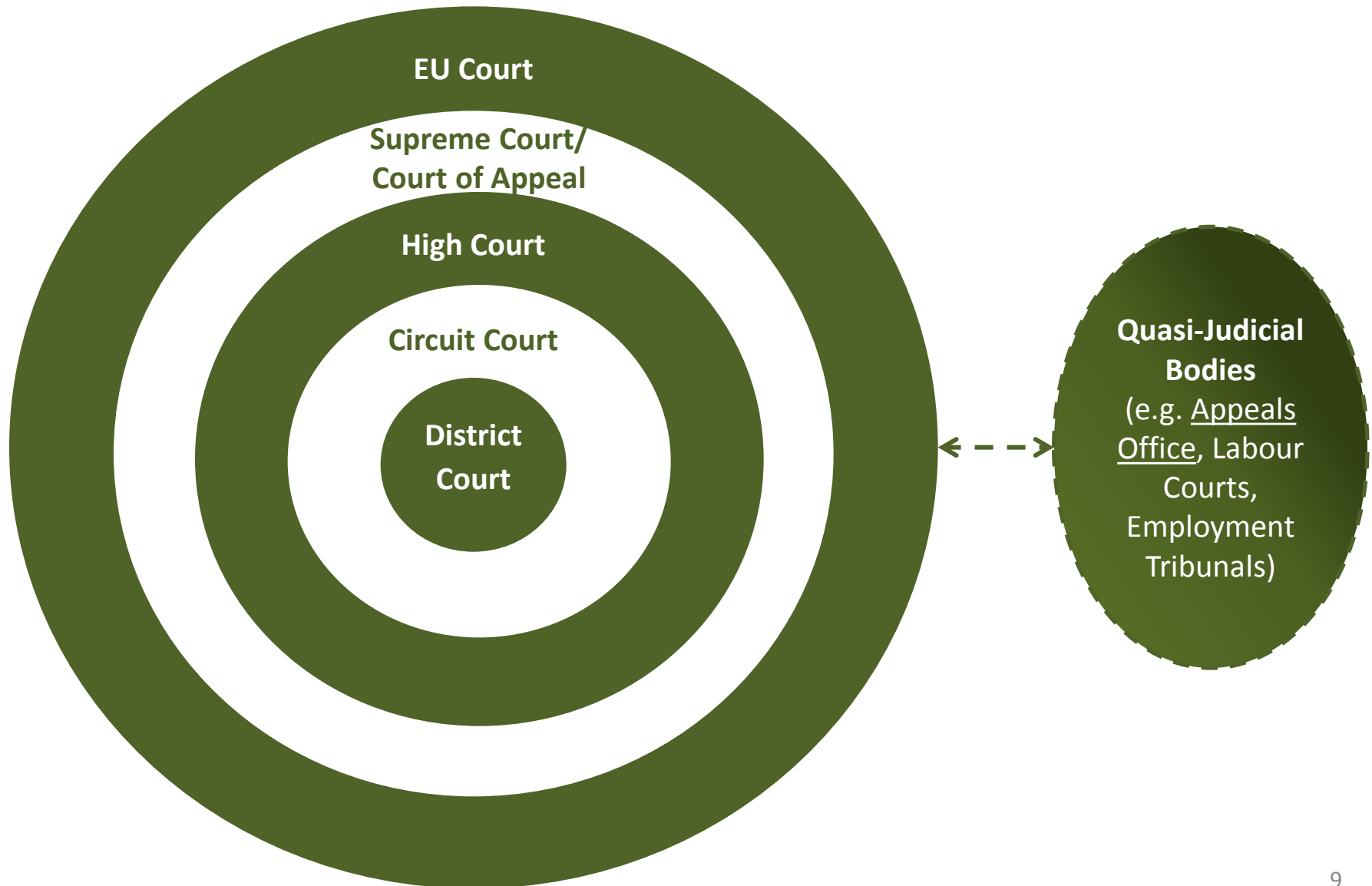
What does the Appeals Officer do?

- Adjudicate on the question under appeal, having regard to the contentions of the appellant and the Department.
- Ensure clients receive a correct determination of their entitlement in accordance with social welfare legislation.

How does s/he do this?

- Examine the question, the facts/evidence and the law.
- Ensure that the principles/concepts of natural justice and fair procedures are applied.







- A **quasi-judicial body** is an entity such as an arbitrator or a tribunal board, which is typically part of a public administrative agency and which:
 - Has powers and procedures resembling those of a court of law or judge,
 - Is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action.
- The powers of a quasi-judicial body are **usually limited to a very specific area of expertise and authority**, such as the implementation of social welfare legislation.
- The Appeals Office is a quasi-judicial body.



There are some key differences between judicial and quasi-judicial bodies, in that:

- Judicial decisions are bound by precedent in common law, whereas quasi-judicial decisions usually are not so bound
- In the absence of precedent in common law, judicial decisions may create new law, whereas quasi-judicial decisions must be based on conclusions of existing law
- Quasi-judicial bodies need not follow strict judicial rules of evidence and procedure
- Quasi-judicial bodies must hold formal hearings only if mandated to do so under their governing laws or regulations.

The independent examination, hearing and adjudication of DEASP appeals in an efficient and courteous manner, having regard to statutory provisions and administrative law.

- The Supreme Court has ruled that the duty of an AO is quasi-judicial and that AOs must be 'free and unrestricted in discharging their functions' (*McLoughlin v. Minister for Social Welfare [1958]*),
- The outcome of an appeal cannot be dictated by another party and an AO cannot delegate the appeals decision,
- In determining an appeal the AO must come to a decision based on the evidence before him/her and not material of which the claimant has no notice,
- An AO is entitled to draw reasonable inferences from the evidence before him/her.

S. 304 – "The Minister may appoint such and so many of his or her officers ...to be appeals officer for the purposes of this Act..."



- The statutory role of the Appeals Officer is set out in law. The AO's powers derive from social welfare legislation enacted by the Oireachtas:
 - Social Welfare Consolidation Act 2005: Sections 304, 306, 311, 313, 314, 317, 320 set out the statutory basis for appeals and the powers of AOs.
 - Social Welfare (Appeals) Regulations (S.I. 108 of 1998): Articles 9 to 18 set out procedures on appeal.
- The question which was before the Deciding Officer (DO) or Designated Person (DP) is the same question as is before the AO:
 - S. 300 – jurisdiction of DO, e.g. 'in relation to a claim for benefit'. ***“Subject to this Act, every question to which this section applies shall ...be decided by a deciding officer”.***
 - S. 311 - ... ***“where any person is dissatisfied with the decision given by a deciding officer or the determination of a designated person in relation to a claim under section 196, 197 or 198, the question shall, on notice of appeal being given to the Chief Appeals Officer within the prescribed time, be referred to an appeals officer” .***
- In some cases a decision on a claim for benefit may require the AO to consider other legislation and legal provisions e.g. EU Law.

Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion

- Constitution of Ireland (Bunreacht na hÉireann)
- Social Welfare Legislation (Acts and Statutory Instruments)
- EU law, in particular EU Regulations & Directives on social security
- Other International Conventions, Covenants and Social Security Codes
- Bilateral Social Security Agreements
- Other relevant legislation (e.g. employment, family, immigration law etc.)
- Case law

NB: **Scheme Guidelines** are the Department's internal interpretation of and general guidance on SW legislation. Their purpose is to promote consistency across the Department in how the legislation is applied and how decisions are made - **but they are not legally binding on DOs/DPs, whereas the legislation must be strictly applied.**



- The **Constitution of Ireland** (Bunreacht na hÉireann) is the fundamental law of Ireland and the highest level of legal instrument in the State.
- The Constitution guarantees certain fundamental rights for all individuals, including:
 - The right to **fair procedures**, which has been interpreted as an ‘unenumerated right’ existing under Article 40.3.
- All statutory provisions are presumed to be constitutional unless the High Court or Supreme Court finds otherwise.
- The European Convention on Human Rights is also understood to guarantee a right to fair procedures in both the civil and criminal spheres.

Primary Legislation – Social Welfare Acts:

- The Social Welfare Acts are the main source of social welfare law and the first reference point for Appeals Officers.
- Enacted by the Oireachtas, they set out the main statutory provisions governing each scheme.
- Main Act is the Social Welfare Consolidation Act 2005, which has been amended by several other Acts.
- Legislation Unit of DEASP provides a 'Running Consolidation of 2005 Act' as an unofficial up-to-date legislative source.
- The SW Acts authorise the Minister to make Regulations (Statutory Instruments e.g. SW Appeals Regulations) to deal with the day to day matters arising from the operation of the primary legislation.



Secondary Legislation - Regulations (Statutory Instruments)

- Regulations, made by the Minister in accordance with powers delegated in the primary legislation, provides greater detail on the manner upon which the Act is to be implemented (Section 4, SW Cons. Act 2005)
- Most regulations do not require approval by the Oireachtas but must be laid before the Oireachtas for information
- Some regulations cannot be made until a resolution approving the draft has been passed by the Oireachtas (Section 4(5) SW Cons. Act 2005)
- Regulations must flow from and be consistent with the Acts and cannot exceeds powers provided in the Act (must not be *ultra vires*)
- All Acts and Statutory Instruments can be found on **www.irishstatutebook.ie**



- Decisions under Social Welfare Legislation must also take account of the existence of legal relationships and principles such as those under employment law, family law, immigration, company law, etc.
- In some (limited) cases, social welfare legislation specifically refers to other legislation, e.g. International Protection Act 2015 under Section 246 of SW Cons Act 2005.
- Case Law –
 - Court judgements create precedent
 - Court Judgements and their implications for the appeals process will be explored later
 - A ***Code of Practice*** in place to determine employment/self-employment status was informed in its drafting by court judgements on the nature of employment contracts.



The 'primacy of European Union law' principle:

- When there is conflict between European Union law and the law of Member States, European Union law prevails;
- In 1972, the Third Amendment of the Constitution explicitly provided for the primacy/supremacy of EU law in Ireland:
 - “...No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.”

Main sources of EU law relevant to AO's

- A **regulation** is a legislative act of the European Union that becomes immediately and simultaneously enforceable as law in all member states, i.e. it is self-executing and does not require any national implementing measures
 - *E.g. Regulation 883/2004 (formerly 1408/71)*
 - *E.g. Regulation 1612/68*
- A **directive** is a legislative act of the European Union which requires member states to achieve a particular result without dictating the means of achieving that result
 - *E.g. Directive 2004/38* was given legal effect in Ireland initially through ***SI 656 of 2006*** , now replaced by ***SI 548 of 2015***

Case Law – The Court of First Instance, the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR) can all issue rulings that are binding on national courts.



Text of Article 34 on Social Security and Social Assistance Rights:

“1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”

- These are drawn up by the Department (DAO and RSU) as internal guidance for first instance decision-makers (Deciding Officers and Designated Persons) in interpreting and clarifying SW legislation.
- The issue of administrative guidelines concerning the operation of a particular social welfare scheme is ‘clearly a proper and valid administrative act’- (*State (Kershaw) v. Eastern Health Board* [1985]).
- Not legally binding.
- DOs and DPs are bound by legislation, not guidelines, in making their decisions.
- Must be consistent with Acts and Regulations.
- Appeals Officers determine appeals in light of social welfare legislation and not DEASP Guidelines.



Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion

1. Fair Procedures/Fair Hearing

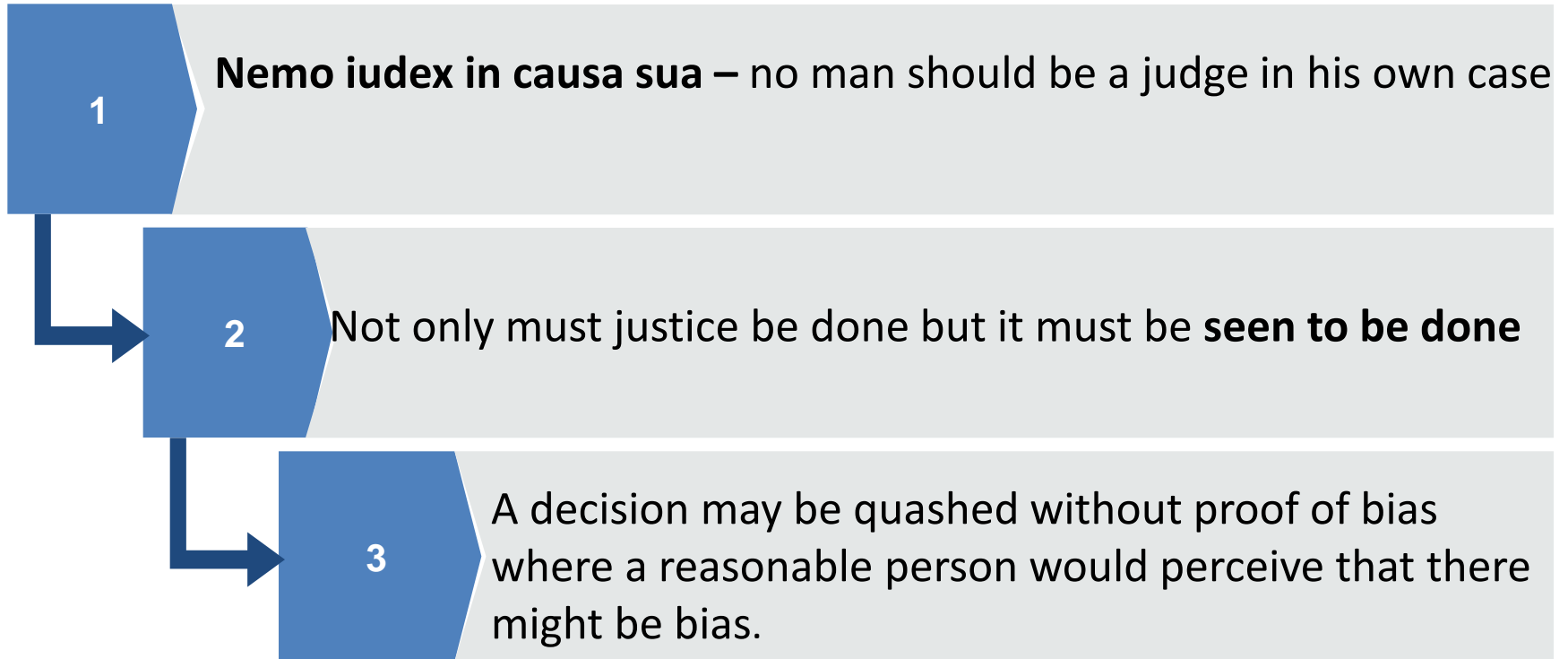
2. Rules Against Bias

3. Right to an Oral hearing

4. Right to Representation



- The concepts of natural justice and fair procedures are fundamental principles in administrative law and are understood to be guaranteed under the Constitution.
- They are founded on the moral principle that **no man should be judged unheard**.
- There are two essential rules of natural justice:
 - ***Nemo iudex in causa sua*** – “***nobody should be a judge in their own cause***”.
The decision maker must be impartial, independent and unbiased and appear to be so. (From *United Breweries Co. Ltd. v. Bath Justices* [1926])
 - ***Audi alteram partem*** – “***hear the other side***”.
 - Any individual who may be adversely affected by a decision should be given an adequate opportunity to present their case,
 - The individual must be given a chance to comment on/rebut the material put forward by the other side,.

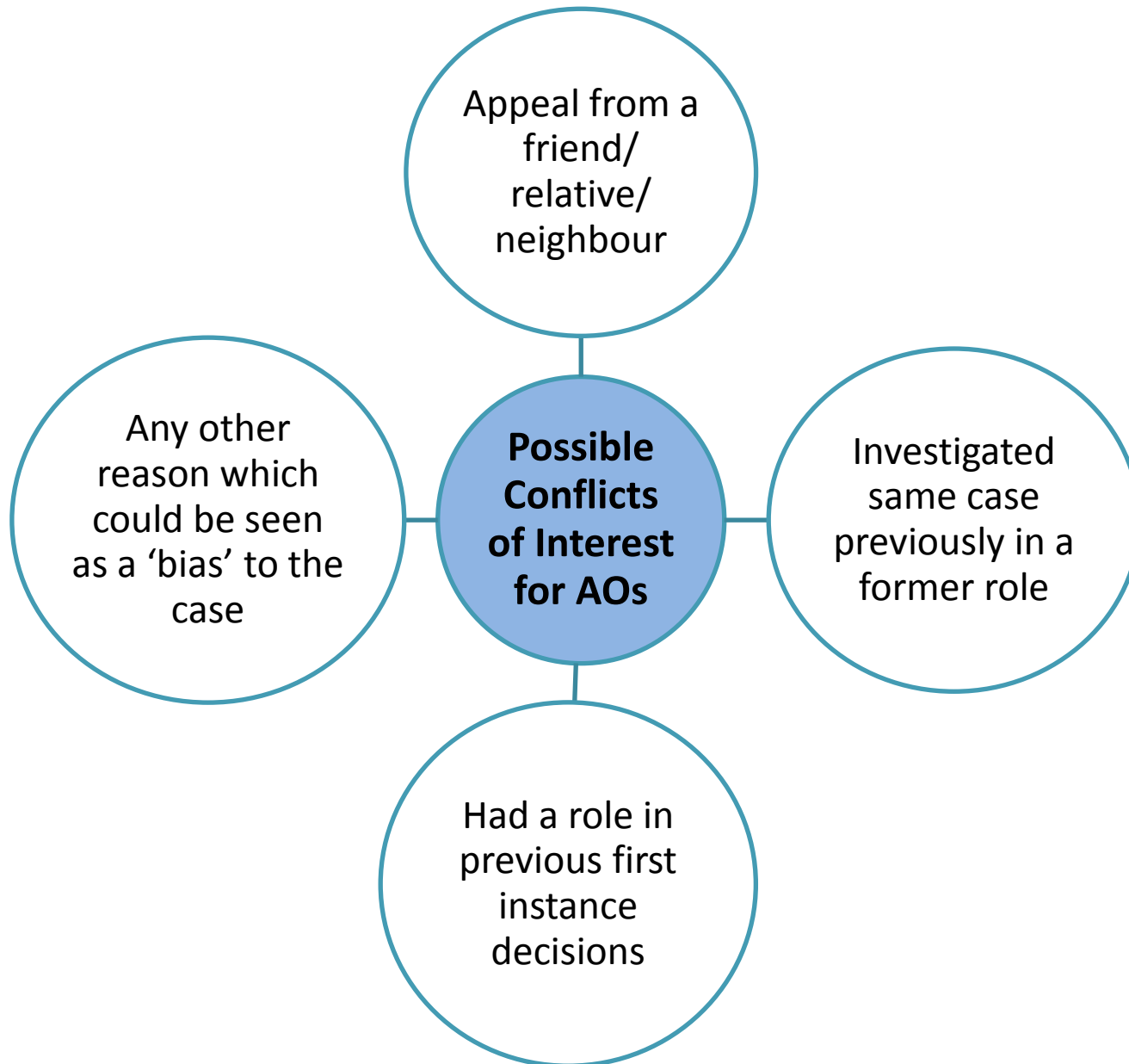




- Subjective/Actual bias - where the decision maker deliberately sets out to hold against a party.
- Presumed bias - where the decision maker has a personal interest in the outcome.
- Apparent bias - where the reasonable party would consider the decision maker not to be impartial
 - The test applied in Irish Courts is an objective one: It is not necessary to show that there was real danger of bias but rather that a 'reasonable person' would have an apprehension that the appellant would not receive a fair and independent hearing from an impartial decision maker.
 - *"...Once the question of a possible perception of bias has been raised reasonably on the grounds of preexisting non-judicial position and actions, it would be contrary to constitutional justice to proceed with a trial."* (Justice Susan Denham in *Dublin Well Woman Centre Ltd and Others v. Ireland* [1995])



- The decision maker must not be biased
- The decision maker must avoid being perceived as biased
- However, bias is a natural function of the human brain!
- There are many potential unconscious or cognitive biases, including:
 - confirmation bias,
 - irrational primacy,
 - anchoring.
- These are all biases that we need to be aware of to ensure that our decisions/conclusions are based only on relevant evidence.



Audi alteram partem' i.e. 'both sides must be fairly heard'

- The claimant/appellant is entitled to know, see and comment on any information / report/ evidence / documentation that may be relied upon in coming to a decision on the case.

(Kiely v. Minister for Social Welfare [1977], and ECHR case of Feldbrugge v. The Netherlands [1986])

- The claimant/appellant is entitled to know the reason for a decision to refuse a claim.

(MD V Minister for Social Protection [2015] IEHC70; National Museum of Ireland V Minister for Social Protection [2016] IEHC135)

- An AO should grant an oral hearing if warranted in the interests of fairness (*Galvin v. the Chief Appeals Officer and the Minister for Social Welfare* [1997]).
- An AO should not take into account irrelevant matters. Otherwise, the court can order the decision-maker to “consider and deal with the application according to law” (*State (Keller) v. Galway County Council* [1958]),
- An AO should not allow a set rule or policy, or another official or organisation to dictate the outcome of an appeal. (*State (Kershaw) v. Eastern Health Board* [1985], and *State (McLoughlin) v. Eastern Health Board* [1986]),
- An AO should come to their decision based on the evidence before them and not on material of which the claimant has no notice (*Kiely v. Minister for Social Welfare* [1977]),
- An AO should not introduce a new issue without notifying the parties (*Galway Mayo Institute of Technology v. Employment Appeals Tribunal* [2007]).
- An AO should give cogent reasons for their decision (*National Museum of Ireland v Minister for Social Protection* [2016], and *State (Creedon) v. Criminal Injuries Compensation Tribunal* [1989]),

- **S.I. 108 of 1998, Art 15(1)** –appellant may be **accompanied** by family member or, with consent of AO, by any other person.
 - in such cases the person is there to provide support to the appellant but would not generally take an active part in the hearing.
- **S.I. 108 of 1998, Art 15(2)** – appellant may, with consent of AO, be **represented** at the hearing by member of family or by any other person.
 - Representation almost always allowed in practice.
- ***Corcoran v. Minister for Social Welfare [1991]***, Justice Murphy held:
 - a solicitor could not, as a matter of right, attend a hearing although it would have been ‘churlish’ if the AO had refused to hear a solicitor,
 - no precedent or authority for proposition that a lay tribunal exercising a quasi-judicial function must afford to the parties an opportunity to procure legal advice and to be represented by lawyers,
 - no constitutional right to legal aid for persons appearing before administrative tribunals.



- **S.I. 108 of 1998:**
 - Art 18(1) – it is for the AO to determine the procedure at hearing.
 - Art 18(2) – the AO has the power to postpone or adjourn the hearing as they may see fit.
- AO may not introduce a new ground without notifying the parties (Galway Mayo Institute of Technology v. Employment Appeals Tribunal [2007]):
 - Art 18(3) – AO may admit any duly authenticated written statement or other material as prima facie evidence

When to schedule a case for Oral Hearing?

Summary

- Where... the **appeal can be properly determined on basis of documentary evidence ... an AO may determine** the appeal summarily (S.I. 108/98, Art. 13) (Kiely v. MSW 1977).
- AO must be satisfied that all cases have been afforded **fair consideration** (whether this is via an Oral Hearing or Summary approach).

Oral Hearing

- Where AO considers an oral hearing is required to **determine the question at issue** s/he will arrange for same (Art 14 S.I. 108/98).
- If there are unresolved conflicts in the documentary evidence or any other matter essential to the ruling of the claim the intention of the regs is that these should be resolved by an oral hearing (Kiely v MSW 1977).



A SUMMARY DECISION will usually be made in the following circumstances:

- The determination of the claim is based on **factual evidence** (e.g. contribution conditions/ straightforward means decision), and
- The **supporting written documentation** is available and **undisputed**
- The determination requires an element of discretion/judgement and there is sufficient information on file to make that judgement



An ORAL HEARING is normally held in the following circumstances:

- The determination of the case involves an **element of discretion/judgement** and the AO requires **elaboration of some aspect of the evidence**
- There is a **conflict in the evidence** provided by the parties
- The DO decision has determined that an **overpayment** has occurred that is repayable by the appellant (because of the impact of the overpayment and the retrospective aspect of the decision)
- **If the appellant requests an oral hearing** it is usually granted unless a hearing would be manifestly unnecessary or unwarranted.

CAO statements before Joint Oireachtas Committee:

*“With regard to summary versus oral decisions **it is down to whether one can fairly decide the case on a summary basis and whether one feels, having examined the file, that one has enough information.** For example, one would have to consider if the person elaborated on a question whether he or she might make a better case or explain it more fully. Obviously, it is down to the individual Appeals officer. **Generally, if we are asked for an oral hearing we accede to it**”. [21 March 2012].*

*“In general, I do not favour saying to people that they can request an oral hearing if they like because it could give rise to an unreal expectation that they will receive one. **In some case, there is clearly nothing to be gained from it.** I refer, in particular, to means and contribution cases. **Generally, where an oral hearing is requested, we grant it,** unless we find we can make a positive decision in a case at the level of summary hearing” [20 February 2013]*

*“There are **no hard and fast rules** to guide an AO ... as to when **the dictates of fairness** require the holding of an oral hearing. The case, (like others), must be decided on the circumstances pertaining, the nature of the enquiry being undertaken by the decision maker, the rules under which the decision maker is acting and the subject matter with which he is dealing and **account should also be taken as to whether an oral hearing was requested**”* (Galvin v Minister for Social Welfare, Supreme Court 1977)



Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion

Question for Consideration

- In considering an appeal the Appeals Officer will normally confine their examination to the grounds for the disallowance as set out in the DO decision/DP determination. It is a rehearing of those grounds based on the relevant legislation and the evidence presented and **not a review of the DO/DP decision/determination.**

Evidence to be Considered

- In considering the question at issue, the Appeals Officer will have regard to **all relevant evidence** including the documentary material, the grounds of appeal including any documentation submitted and/or oral evidence at the hearing.

Application of Legislation

- The conditions underlying entitlement to benefit are contained in provisions of **social welfare legislation** and the Appeals Officer **must apply this legislation** to his/her findings of the facts in determining the question under appeal. Statutory interpretation can occur however in making findings of fact based on particular circumstances AOs should strive for consistency in their interpretation of the law (AO Team site & SWAO annual report case studies)
- Some issues may involve the application of other legislation **EU law** or **case law** – e.g. *whether a foreign divorce might be recognised as valid* or *whether the conditions of an employment are as an employee or self-employed person.*

Fair Procedure

- The AO in determining the appeal must ensure that fair procedures have been applied at every stage of the process

What?

Evidence is defined as “That which tends to prove the existence or non existence of some fact”.

All the information available is evidence.

Evidence is used to find the facts of the case.

Why?

Evidence is needed for the simple reason that a decision cannot be made without it.

Evidence is the basis for accurate findings of fact

Without relevant evidence a proper conclusion cannot be reached

Evidence can be written or oral:

- The AO may admit any duly authenticated written statement as prima facie evidence:
 - “*Prima facie evidence*” means prima facie proof of an issue, the burden of proving which is upon the party giving that evidence. “*In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof*” - Kiely [1977]
- However, it appears that **written evidence should be outweighed** if a witness can give **credible oral evidence** contradicting the written statement – Kiely [1977]
 - “*Once the fact sought to be proved by the statement is controverted by probative evidence to the contrary, the statement ceases to be prima facie evidence of that fact. Therefore, it ceases to be admissible and the fact requires to be proved by oral, although not necessarily by sworn, testimony.*”

Direct- This is the best evidence upon which to base a decision

- Can be in writing (payslip, GP's letter, etc.)
- Oral admission of a fact is direct evidence

Hearsay- Reports by others, not directly observed

- Must have been investigated and appellant given opportunity to confirm/ refute/ comment

Anonymous Reports

- Simply a trigger for an investigation by Department
- Should never be on an appeal file

Indirect/ Circumstantial- Establishes the facts by inference only

- Needs to have been investigated and confirmed before it can be considered evidence

Inference cannot be made by the Department or the AO without the evidence to draw it from

Burden of Proof- 'He who asserts must prove'

- **When a person applies** for a social welfare payment, the **burden of proof lies with them** to show that they meet the conditions of entitlement
- **When a claim is in payment and is subject to review** the **burden of proof shifts to the Department** who must have substantial proof that the change is appropriate
- **Natural justice** must have been applied by the Department
- A person cannot have been asked to provide that which was not in their power and **must have been allowed a reasonable time** to produce evidence requested

Standard of Proof

- In Civil law, the standard of proof generally applied is the '**balance of probabilities**' i.e. **asking whether something 'is more likely than not'** rather than 'beyond a reasonable doubt' which is the standard required in criminal law

Quality of Evidence

- Is it **Clear, Accurate, Complete, Consistent, Rational, Tainted, Credible, No Conflict**

The following principles in relation to how AOs should handle evidence are all supported by Irish case law previously referred to –

- The AO must come to a **decision based on the evidence** before them, and not material of which the claimant has no notice.
- The AO must **disregard irrelevant matters**.
- The AO must not allow **anything or anybody else to dictate the outcome**.
- The AO is entitled to **draw reasonable inferences** from the evidence before them.
- The AO should grant an **oral hearing** if fair procedures demand it, including where there are conflicts of evidence to be explored and resolved.
- The AO should **explain** in broad terms what evidence was and was not persuasive to them when writing their decision.



- We must be careful not to discriminate in our work as AOs.
- Discrimination is treating one person in a less favourable way than another person.
- Certain grounds are protected by law in Ireland. These are:
 - Gender
 - Civil status (single, married, separated etc.)
 - Family status (parenting relationships)
 - Sexual orientation
 - Religion
 - Age
 - Disability
 - Race
 - Membership of the Traveller Community
- We must be self aware and avoid unconscious discrimination, particularly in our communication and decision-making processes.



Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

**Part 5:
Making/Writing
Decisions**

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion

Decisions by public bodies, which impact on the lives of the general public, whatever their outcome, must adhere to a process which renders the decision fair, reasonable, legitimate and open to scrutiny

Each decision should be based on the facts as they currently exist, not what has happened in the past or is likely to happen in the future

The duty of an AO is laid upon him/ her by the Oireachtas and s/he is required to perform it freely and fairly (*McLaughlin v MSW [19580 IR 5]*)

Good Practice

- ❖ In terms of administrative law, the reasons given by the public body for their decision will be of fundamental importance as such reasons must be clear and unambiguous.
- Avoid simple conclusions without explanations
- AO develops the weight of evidence and the sequence of points considered in coming to their decision
- AO refers clearly to the evidence which is being accepted, or that which is rejected in reaching the conclusion in the case, as well as to the relevant legislation in determining the appeal
- AO needs to be able to state and defend why s/he finds the appellant's evidence not to be credible or convincing
- Remember to distinguish between tainted evidence and the rest of the evidence



Legislation:

See S.I. 108 of 1998 (the 'Appeals Regulations') - Article 19(2) -

“In any case where the decision of the appeals officer is not in favour of the appellant, the appeals officer shall attach to his or her decision a note of the reasons for the said decision.”

Previous Case Law:

- the unsuccessful applicant before it **should be made aware in general and broad terms of the grounds on which he or she has failed** (*State (Creedon) v. Criminal Injuries Compensation Tribunal [1989]*),
- to maintain a silence as to the reason for it **is not consistent with the proper administration of functions which are of a quasi judicial nature** (*State (Creedon) v. Criminal Injuries Compensation Tribunal [1989]*).

In **National Museum of Ireland v Minister for Social Protection**

[2016], the Court stated that, as a matter of law, the decision making body has an obligation to:

1. Outline the facts before them;
2. Outline the disputes in relation to those facts;
3. Outline the reasons why the AO has preferred the facts advanced by one party, or has come to an interpretation based on those facts;
4. Outline the weight the AO has accorded same; and
5. AO must give their reasons and considerations in a way which not only explains why they have taken a different course, but must do so in a cogent way so that an interested party can assess whether or not the decision is reasonably capable of challenge.



Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

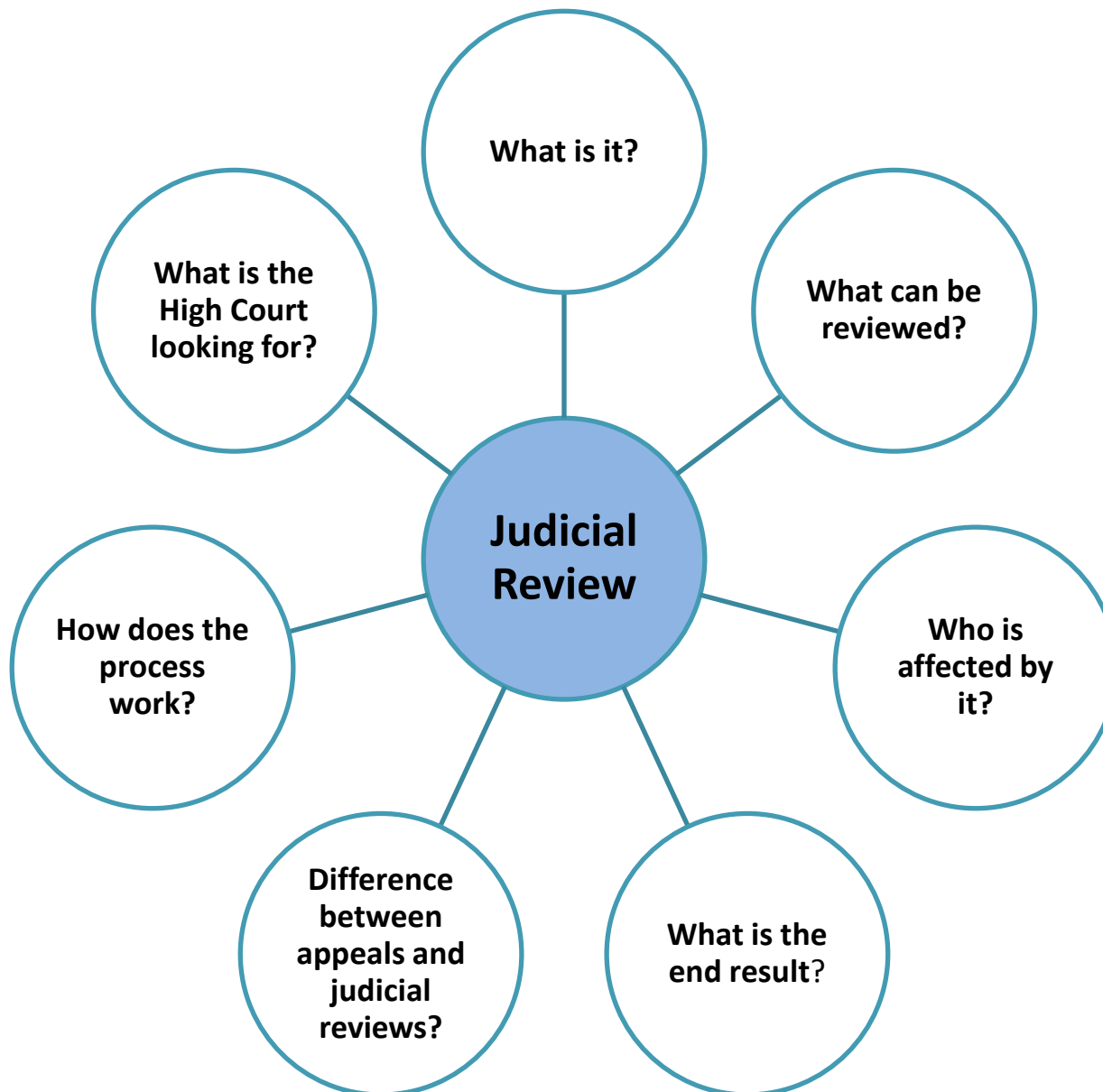
Part 4:
Evidence

Part 5:
Making/Writing
Decisions

**Part 6:
Judicial Review**

Part 7:
Judicial Review
Cases

Part 8:
Recap and
Conclusion



What is Judicial Review?

- The procedure by which the High Court can review a decision made by a public authority in order to check if the decision was made properly and in accordance with:
 - Fair procedures
 - Natural justice
 - The Constitution

What can be reviewed?

- Decisions of the inferior courts (District and Circuit),
- Certain ministerial decisions,
- Decision made by a wide range of administrative bodies and tribunals, either in accordance with statute or if there is a 'public element' to their decisions.

Who is affected by it?

- Administrative bodies such as: Social Welfare Appeals Office, An Bord Pleanála, Employment Appeals Tribunal, the Law Society, local authorities, the Adoption Board, Government Departments etc.
- Individuals or legal entities that can show they have a sufficient interest in the matter and are in some way personally affected or prejudiced by the decision in question.

Reliefs

Certiorari
(An order to
quash the
decision)

Prohibition
(An order to
restrain
from acting
in excess of
jurisdiction)

Mandamus
(An order to
perform a
public duty)

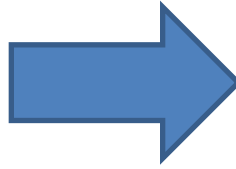
Declaration
(Statement
by HC as to
the legal
rights of the
parties)

Injunction
(An order
preventing a
body from
doing
something)

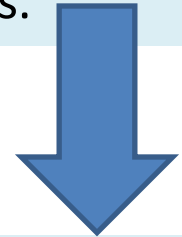
Damages
(€€€)

How is an appeal different from judicial review?

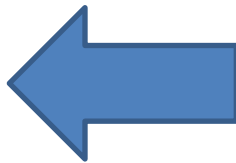
1. In an appeal, the decision / conclusion reached by the decision maker can be questioned.



2. In a judicial review, the High Court is concerned only with whether the decision was made in accordance with the law and fair procedures.



4. If an applicant has a choice between a judicial review or an appeal, the Court is reluctant to grant judicial review because an **alternative remedy** is available.



3. High Court will not strike down a decision simply because it would have decided the matter differently. The task is only **to determine the lawfulness of how the decision was reached.**

The judicial review process has two stages –

1. Firstly, the applicant must go through a ‘filtering process’ in order apply for ‘leave’ (permission) to seek judicial review.
 - The ‘filtering process’ is to ensure the High Court isn’t inundated with unmerited claims.
2. Then, if leave is granted, the pre-trial process begins and a date for trial is fixed.

In order to obtain leave for judicial review, the court will look at:

- a. The ‘locus standi’ of the applicant – this is whether they are sufficiently personally prejudicially affected by the decision in question,
- b. Whether they have an ‘arguable case’ – this is quite a low threshold to reach,
- c. Whether they have met the time limits (usually between 2 weeks - 3 months),
- d. Whether there is an ‘alternative remedy’ available such as a right to appeal.

The High Court looks at the lawfulness of actions taken/decisions made:

- **Errors of Law and Errors of Jurisdiction:**
 - Did they have the statutory or other legal power to make the decision?
 - Did they act within the scope of those powers or were they *ultra vires*?
 - Did they take the right matters into account?
 - Did they ask the right legal question?
- **Procedural Fairness:**
 - Did they apply the constitutionally and ECHR guaranteed principles of 'fair procedures' and 'natural justice' when making the decision?
- **Reasonableness:** Only in exceptional cases, the High Court may review the merits of a decision where it is shown to be unreasonable or irrational.
- **Errors of Fact:** Only in exceptional cases, the High Court may review an error of fact if it is fundamental to the decision.

“[The High Court’s] jurisdiction is confined to the examination of the legality of the decision or measure sought to be impugned and particularly of the legality of the process by which it has been made. It is not directed at the merits of the measure or the question as to whether the decision was the right or wrong decision.”

- Mr Justice Cooke in the High Court case of *O’Leary and Others v. The Minister for Justice, Equality and Law Reform* [2012]

Most usual outcome of a judicial review if an applicant is successful is a quashing order (Certiorari) of the original decision.

*The High Court will then **remit the matter** to the decision maker to make a decision in accordance with their judgment, but only in terms of the lawfulness of the process, not the merits.*



If dissatisfied with the outcome of a Judicial Review by the High Court, the applicant may seek:

- An appeal to The Court of Appeal or to the Supreme Court,
- Where there is an EU dimension, a referral to the EU Court of Justice.



Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

**Part 7:
Judicial Review
Cases**

Part 8:
Recap and
Conclusion



- The decision making process, as presented, and the evidence which formed the basis of decisions, did not show a process that engaged with the evidence in a meaningful way.
- The decisions breached fair procedures, natural and constitutional justice, by failing to properly consider all of the evidence furnished by the appellant.
- A decision making body must give reasons for decision.



- Main Issue: Refusal of CAO to agree to attendance of MAs and DOs at Appeal Hearing
- Attendance of MAs counter-intuitive- their opinions were not on file and not relied upon
- The decision of the DO is under appeal, not under review
- There is nothing in the Regulations that requires the CAO to compel the attendance of the DO (Regulation SI 108 of 1998.)



- Entitlement to an oral hearing was the main issue
- Court said ‘ No absolute entitlement’ to an oral hearing – one can be requested but it does not follow that it must be permitted. It is at the discretion of the AO – a discretion that must be exercised fairly
- It is implicit...in Act and Regulations... that an Appeals Officer/CAO may hold an oral hearing even if it’s only purpose is to determine whether there are new facts or new evidence to justify a revision of an AO’s decision. New facts or new evidence not confined to matters that happened/generated after the decision
- An appeal decision is final and conclusive and subject to revision under S. 317, i.e. the appeal and revision of an appeal are two stages of an appeals procedure
- Decision may be revised under S.317.
- It is permissible to have an oral hearing as part of the revision procedure under S. 317 – a request for an oral hearing is a new fact, even if not new evidence
- The power to revise under S. 317 is broad and flexible which permits any decision of an appeals officer to be revised “at any time”



- Entitlement of CAO under Section 318 to revise the decision of the AO and to reschedule an oral hearing before a different AO.
- The Chief Appeals Officer is an appeals officer-See S.305 of 2005 Act. Section 313 of the Act empowers the CAO to take evidence on oath on the hearing of any matter referred to him or her under this Part. A revision is part of the appeals process contained within Chapter 2 of Part 10 of the Act of 2005, and an Appeal is a “matter referred to him or her under this Part”. As I stated in LD V Chief Appeals Officer, the power to take evidence on oath at a hearing implies that a hearing can be directed, even though S. 318 does not specifically say so.
- There is provision for a revision of the summary decision, and this can be done by way of Oral Hearing.

- Section 2(1) of Social Welfare Consolidation Act 2005 defines 'cohabitant' means a cohabitant within the meaning of section 172 (1) of the above Act.
- *...a cohabitant is one of 2 adults (whether of the same or opposite sex) who live together in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.*
- The above court case clarified what is meant by intimacy in the context of the definition of cohabitant
- Justice Baker stated - *"The Act offers no assistance as to what is meant by an intimate relationship, but having regard to s. 172(3) it is clear that the relationship must have been at some point in time a sexual relationship for intimacy to be found. The intimacy that is intended is a sexual intimacy and not merely the intimacy of a close friendship"*.
- See Joint Cases 2015/22 & 2015/23 in Annual Report



Part 1:
Introduction

Part 2:
Sources of Law

Part 3:
Natural Justice and
Fair Procedures

Part 4:
Evidence

Part 5:
Making/Writing
Decisions

Part 6:
Judicial Review

Part 7:
Judicial Review
Cases

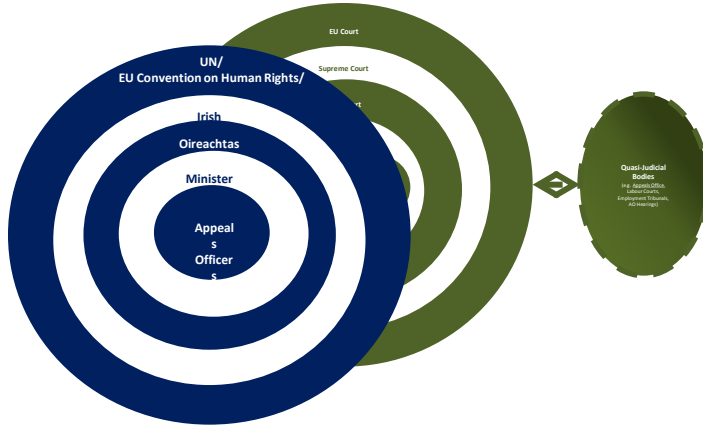
Part 8:
Recap and
Conclusion

Recap and Conclusion

Key Content Covered in this training module



The Legal Context within which the AO works



Sources of Law

- European Convention on Human Rights
- EU law
- Other International Conventions, Covenants and Social Security Codes
- Bilateral Social Security Agreements
- Irish Constitution
- Social Welfare Acts and regulations
- Other Relevant Legislation (e.g. Employment, Family, Immigration Law etc.)

Natural Justice & Fair Procedures

1. Fair Procedures/Fair Hearing

2. Rules Against Bias

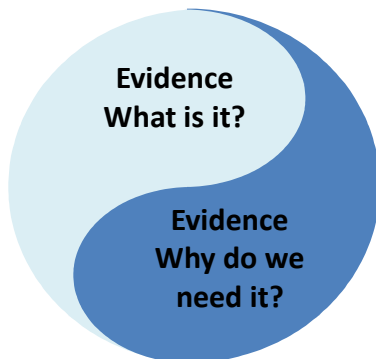
3. Right to an Oral hearing

4. Right to Representation

Evidence

Making/Writing Decisions

Judicial Review



Making/Writing Decisions

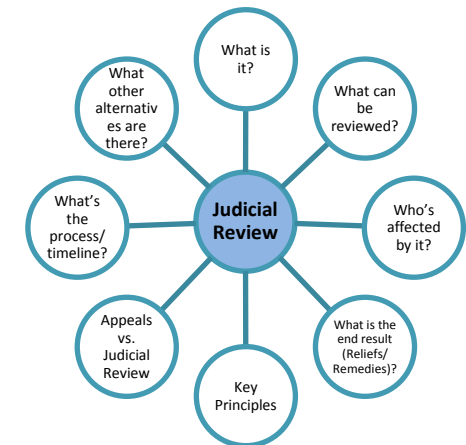
General Principles of AO Decision Making



Decisions by public bodies, which impact on the lives of the general public, whatever their outcome, must adhere to a process which renders the decision fair, reasonable, legitimate and open to scrutiny

Each decision should be based on the facts as they currently exist, not what has happened in the past or is likely to happen in the future

The duty of an AO is laid upon him/her by the Oireachtas and s/he is required to perform it freely and fairly (*McLaughlin v MSW [19580 IR 5]*)



Through this training, we hope you have developed a further understanding of:

- The full legal context within which the Appeals Officer operates
- The quasi-judicial role of the Appeals Officer
- The various sources of law applying to the role of the Appeals Officer
- The concepts of fair procedures and natural justice
- The different forms and types of evidence you will use in your decision-making
- How to make and record decisions correctly, reflecting the evidence and applicable legislation
- The judicial review process and its implications for Appeals Officers



Managing an Appeal



Agenda

Part 1 - Introduction



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an
Oral Hearing

Part 6:
Making & Writing
Appeal Decisions

Part 7:
Managing Ongoing
Cases

Part 8:
Recap & Conclusion

Agenda

Part 1 - Introduction



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an
Oral Hearing

Part 6:
Making Decisions &
Writing Appeals
Reports

Part 7:
Managing Ongoing
Cases

Part 8:
Recap & Conclusion

Mobile Phones

- Please ensure your mobile is turned off or on silent mode

Fire Alarm

- In the unlikely event that the alarm should sound, please leave the building in an orderly fashion. Please exit the training room to the lift lobby. **DO NOT USE THE LIFT.**

*The stairs to the left of the lifts will lead you to the exit on the ground floor. You should then make your way to the assembly point at the Screen Cinema – across the road, and to the left of Pearse St. Garda Station.

Toilets

- Toilets are located in the lift lobby.
- Wheelchair accessible toilets are located on Floor 2.

Breaks

- Morning break at approx. 10:40
- Lunch break at approx. 13:00
- Afternoon tea at approx. 15:00



By the end of this module, we expect participants to be able to:

- Understand overall Appeals Office processes
- Understand and apply best practice in managing appeal submissions
- Vet and separate appeal cases into summary and oral cases
- Understand actions required for dealing with summary cases/ oral cases
- Know how to research information relating to an appeal
- Understand the decision making process underpinning an appeal
- Have confidence in preparing for and conducting an oral hearing
- Be familiar with best practice in conducting oral hearings

Agenda

Part 2: The Appeals Process



Part 1:
Introduction

Part 2:
The Appeals
Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an Oral
Hearing

Part 6:
Making & Writing
Appeal Decisions

Part 7:
Managing Ongoing
Cases

Part 8:
Recap &
Conclusion



The Social Welfare Appeals Office operates independently of the DEASP

S. 311 provides that where a person is dissatisfied with the decision given by a DO or the determination of a DP under S. 196, 197 or 198 the question shall, on notice of appeal being given to the CAO within the prescribed time, be referred to an AO

It is charged with determining appeals by persons who are dissatisfied with decisions made by Deciding Officers (DO) or Designated Persons (DP) of the DEASP on questions relating to entitlement to social welfare payments and insurability of employment under the SW Acts

The CAO, DCAO and the AOs are appointed by the Minister in accordance with statutory provisions (S. 304-305)

The Chief Appeals Officer:

- Is responsible for distributing appeals to AOs and for their prompt consideration (Art 6 S. I. 108/98)
- Must provide an annual report to the Minister on the activities of the office. (S. 308 SWCA 2005)
- May convene meetings of AOs for the purpose of discussing matters relating to the discharge of their functions... **including consistency** (Art 7 S.I. 108/98)
- May, at any time, **revise any decision** of an Appeals Officer, where it appears to the CAO that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts (S. 318 SWCA 2005)

The Deputy Chief Appeals Officer (DCAO) is designated by the Minister to act as the deputy for the Chief Appeals Officer when that Officer is not available
(S. 305 of SWCA)

- In addition to the role of supporting and deputising for the CAO, the DCAO is responsible for operational management of the appeals office, including support for and supervisory management of AOs

The independent examination, hearing and adjudication of DEASP appeals in an efficient and courteous manner, having regard to statutory provisions and administrative law.

- The Supreme Court has ruled that the duty of an AO is 'quasi' judicial and that AOs must be 'free and unrestricted in discharging their functions' (*McLoughlin v. Minister for Social Welfare [1958] IR*)
- The outcome of an appeal cannot be dictated by another party and an AO cannot delegate the appeal decision
- In determining an appeal the AO must come to a decision based on the evidence before him/her and not material of which the claimant has no notice
- An AO is entitled to draw reasonable inferences from the evidence before him/her

S. 304 – "The Minister may appoint such and so many of his or her officers ...to be appeals officer for the purposes of this Act..."

Administration:

Primary role of the SWAO admin sections is to support Appeals Officers (including the Chief and Deputy Chief Appeals Officers) in carrying out their duties.

A computer system (INGRES) is used to track appeals through the various stages of the process.

Sections within the Administration office:



Role of Registration Section:

- Verify that appeal is valid
- Register appeal on the Appeals (INGRES) system and allocate appeal number (checking for and linking appeals)
- Send acknowledgment to client
- Send appeal (letter of Appeal) to line section with request for file papers and submission from the Deciding Officer (Art 10 S.I. 108/98)
- Manage SWAO Reception:
 - Deal with customers who call to office and organise oral hearing attendees (appellants, DOs, SWIs, etc.)



Role of Control Section:

- Update appeal status on INGRES and prepare files for allocation to AOs on return from Line Section
- Contact Line Sections re delays in return of files
- Manage phone-bank





Scheduling and Planning Section

- Distribute files to AO's, under the direction of the CAO/DCAO (Art 6 & Art 8 S.I. 108/98)
- Deal with post, phone calls, emails from AOs, DEASP staff, clients, etc. once appeal file has been allocated to AO
- Arrange Oral Hearing Schedules as requested by AOs. This involves:
 1. Contacting hotels to book rooms for hearings (**AO to collect hotel receipt**)
 2. Updating computer system on status of file
 3. Issuing letters to clients and other third parties (to attend i.e . SWIs, DOs) as instructed by the AO
 4. Arranging for interpreters if required
 5. Managing all communication with the appellant

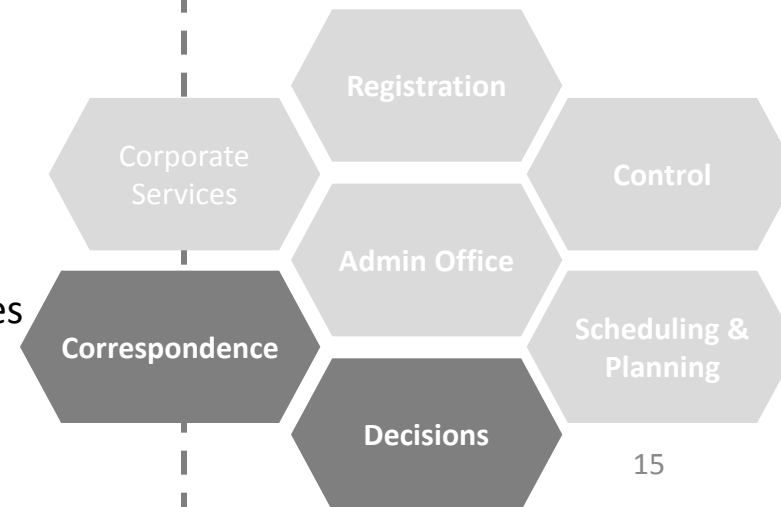


Role of Decisions Section:

- Issue appeal decision on behalf of AO to clients and line sections
- Administer payment on behalf of AO of travel expenses incurred by clients attending Oral Hearings (S. 316)
- Return files to line sections to implement decision of AO

Role of Correspondence Section:

- Correspondence Section deal with correspondence/telephone enquiries from:
 - TD's - including Parliamentary Questions
 - Other Public Representatives
 - Solicitors
 - FOI requests
 - Requests for review of AO decisions/closed appeal files



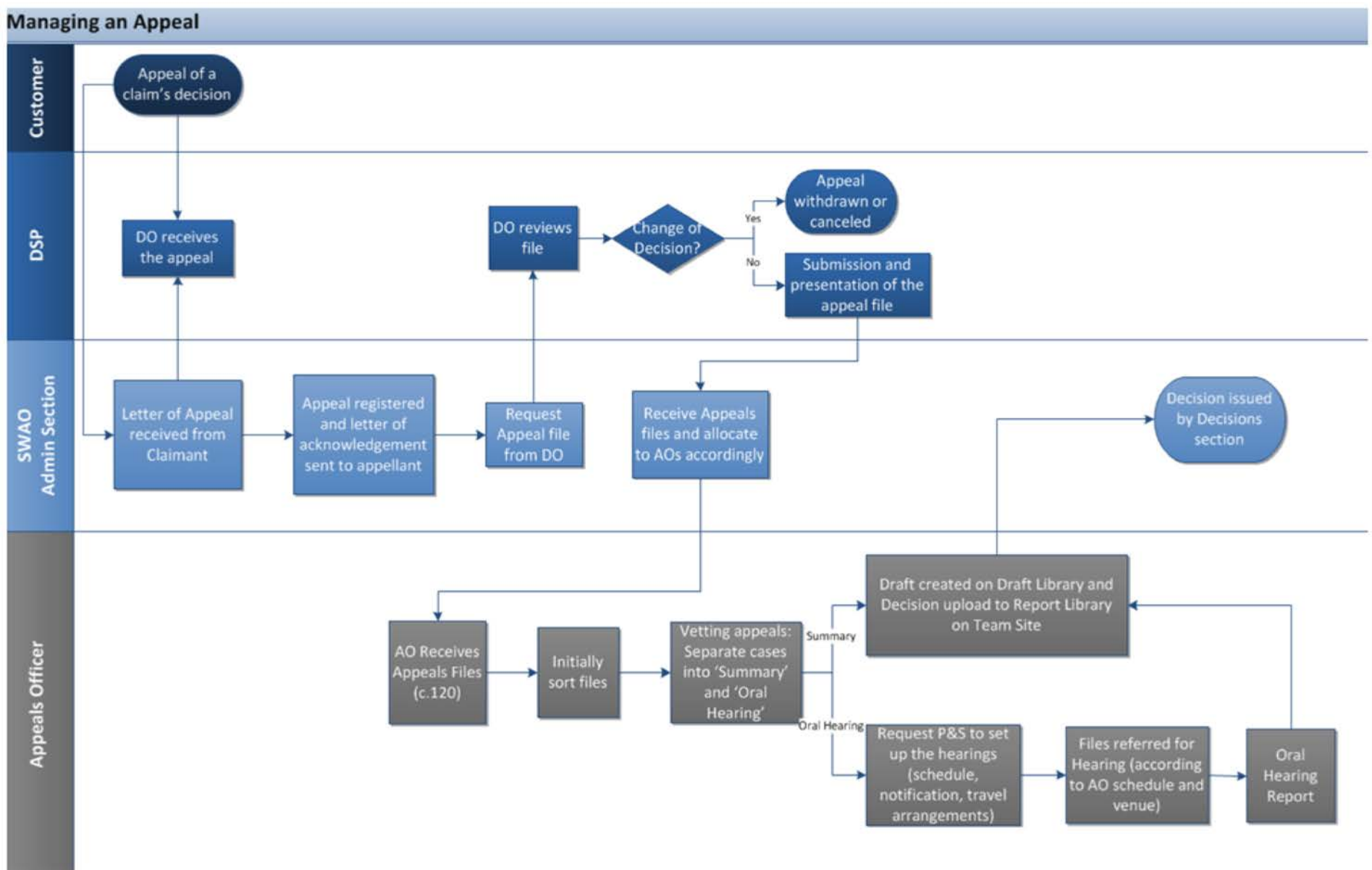
Role of Corporate Services:

- Facilities management, SWAO library & stationery/supplies for AOs
- Budgets, etc.
- SWAO website and email account
- Annual Report
- Appeals Officers conference
- Statistics
- Ombudsman liaison
- Management of court case register



The Appeals Process

The Lifecycle of an Appeal



Agenda

Part 3 – Vetting an Appeal



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an
Oral Hearing

Part 6:
Making & Writing
Appeal Decisions

Part 7:
Managing Ongoing
Cases

Part 8:
Recap & Conclusion

1. The AO first becomes involved in the appeals process at the vetting stage

2. Vetting is the term used to describe the first consideration that an AO gives to the appeal

3. The objective is to gain a full understanding of the appeal question to determine if there is sufficient information to decide the question summarily, or if an oral hearing is required

4. If there is a second appeal for a different scheme but interrelated, the AO will generally deal with both



NB: AO is making 2 decisions, therefore needs enough information to make/ record both decisions



Region

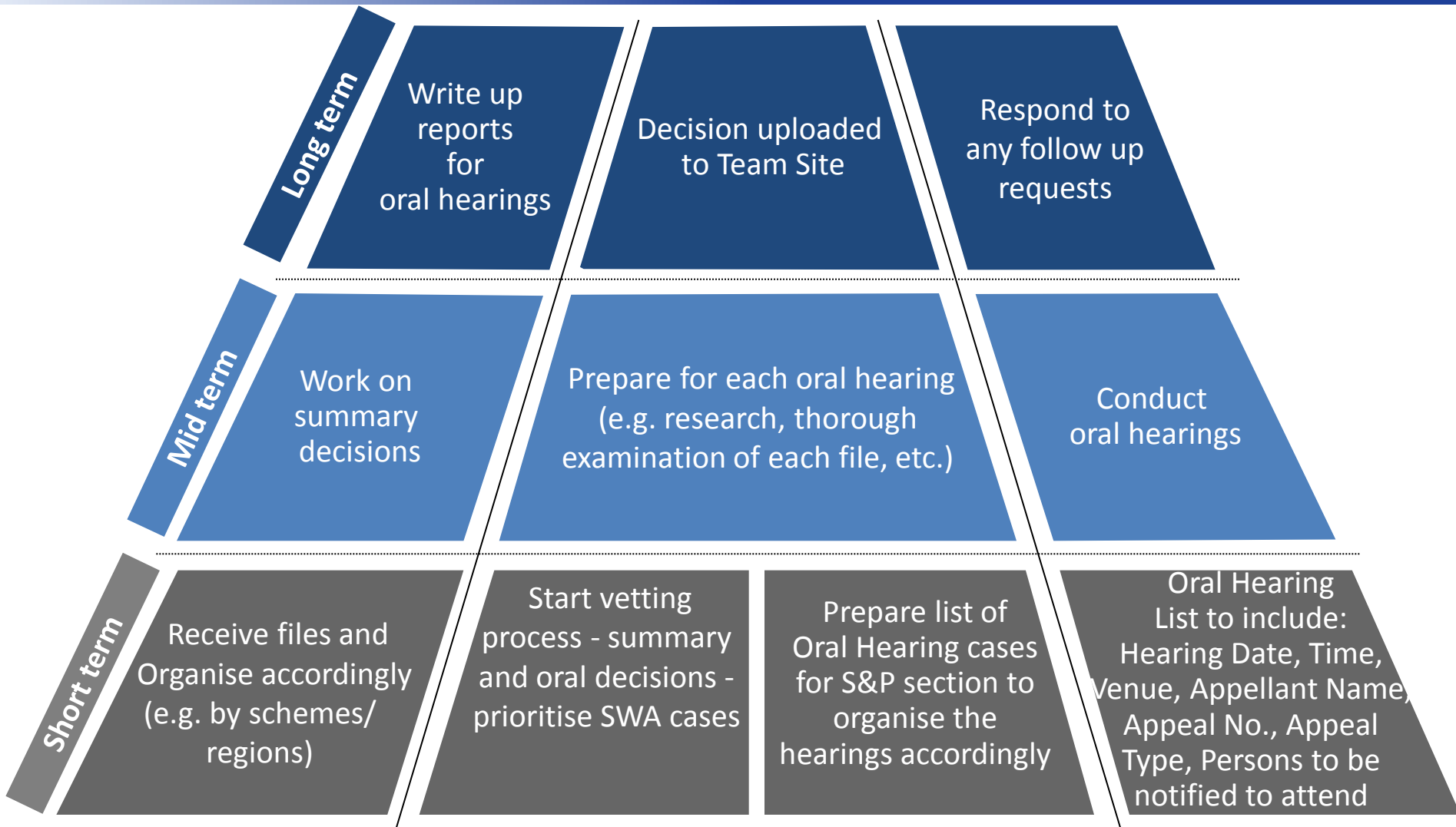
Schemes

Complexity

Other

Vetting an Appeal

Workflow Overview



Six-Week Cycle

WHAT TO LOOK FOR

1. What is the question before the AO?

2. Is there a valid reasoned decision by the D.O.?

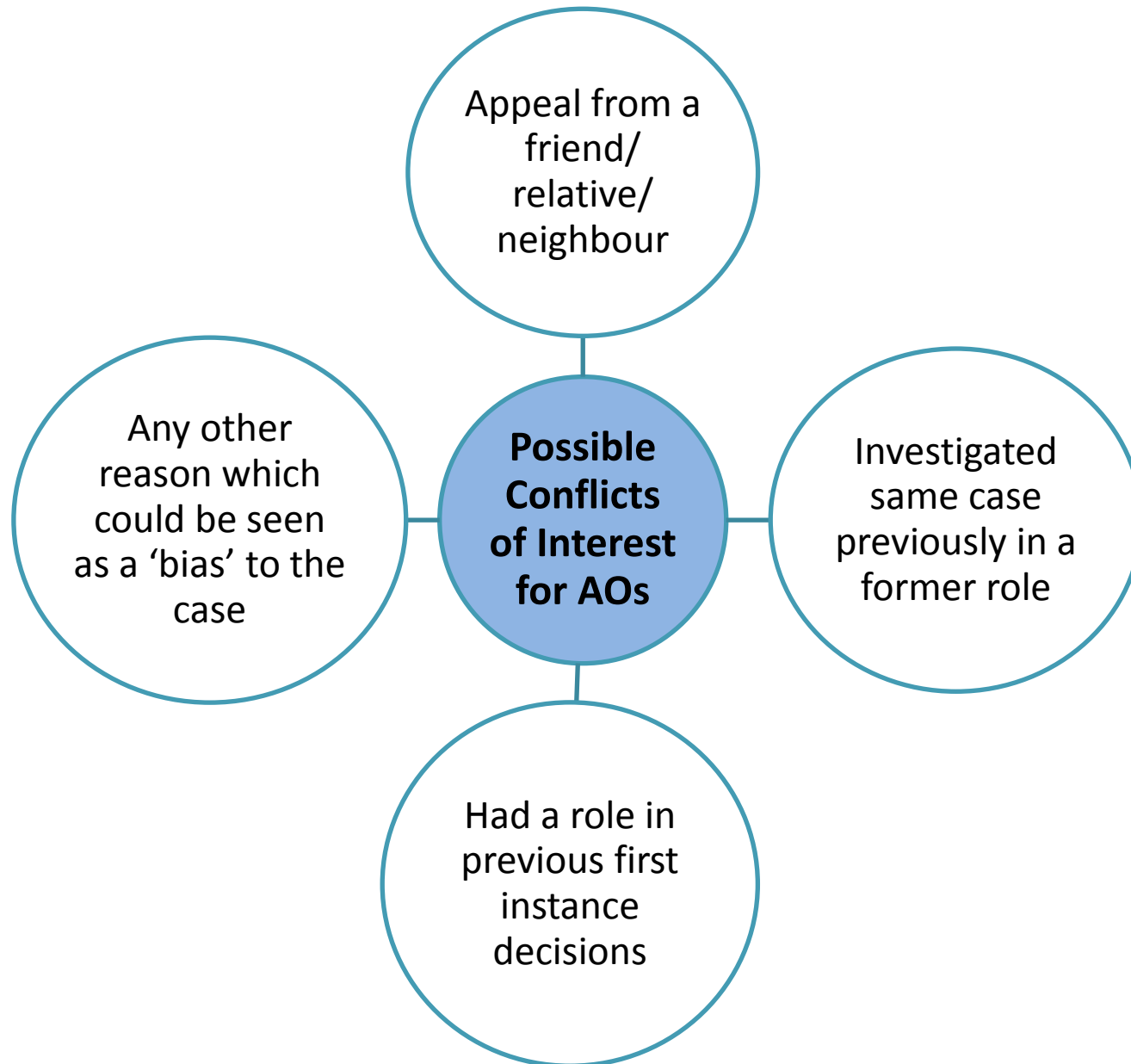
3. What is the legislative basis for the decision?

4. What are the appellant's contentions?

5. Has the D.O. addressed the appellant's contentions?

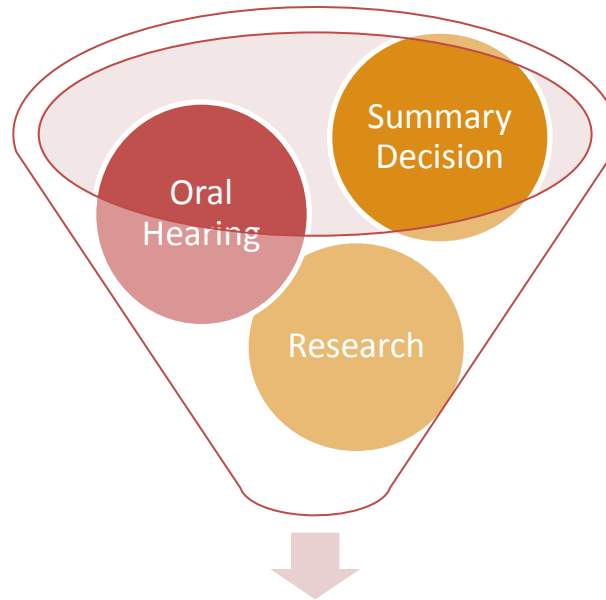
6. Is an oral hearing required or can appeal be fairly determined summarily?

7. Consider urgency of appeal?



Vetting an Appeal

Visual Depiction of Vetting Process



Summary - decide on the appeal based on the written evidence contained in the file

*Decision
uploaded to
Team Site*

Oral Hearing – review written evidence but await hearing with appellant before deciding appeal

*Send Oral
Hearing Schedule
to S&P to arrange
hearings*

Administration (Scheduling & Planning , Decisions Section, Phone Bank)

When to schedule a case for Oral Hearing?

Summary

- Where... the **appeal can be properly determined on basis of documentary evidence ... an AO may determine** the appeal summarily (S.I. 108/98, Art. 13) (Kiely v. MSW 1977).
- AO must be satisfied that all cases have been afforded fair consideration (whether this is via an Oral Hearing or Summary approach).

Oral Hearing

- Where AO considers an oral hearing is required to determine the question at issue s/he will arrange for same (Art 14 S.I. 108/98).
- If there are unresolved conflicts in the documentary evidence or any other matter essential to the ruling of the claim the intention of the regs is that these should be resolved by an oral hearing (Kiely v MSW 1977).



A SUMMARY DECISION will usually be made in the following circumstances:

- The determination of the claim is based on **factual evidence** (e.g. contribution conditions/ straightforward means decision), and
- The **supporting written documentation** is available and **undisputed**
- The determination requires an element of discretion/judgement and there is sufficient information on file to make that judgement



An ORAL HEARING is normally held in the following circumstances:

- The determination of the case involves an **element of discretion/judgement** and the AO requires **elaboration of some aspect of the evidence**
- There is a **conflict in the evidence** provided by the parties
- The DO decision has determined that an **overpayment** has occurred that is repayable by the appellant (because of the impact of the overpayment and the retrospective aspect of the decision)
- **If the appellant requests an oral hearing** it is usually granted unless a hearing would be manifestly unnecessary or unwarranted.

CAO statements before Joint Oireachtas Committee:

*“With regard to summary versus oral decisions **it is down to whether one can fairly decide the case on a summary basis and whether one feels, having examined the file, that one has enough information.** For example, one would have to consider if the person elaborated on a question whether he or she might make a better case or explain it more fully. Obviously, it is down to the individual Appeals officer. **Generally, if we are asked for an oral hearing we accede to it**”. [21 March 2012].*

*“In general, I do not favour saying to people that they can request an oral hearing if they like because it could give rise to an unreal expectation that they will receive one. **In some case, there is clearly nothing to be gained from it.** I refer, in particular, to means and contribution cases. **Generally, where an oral hearing is requested, we grant it,** unless we find we can make a positive decision in a case at the level of summary hearing” [20 February 2013]*

*“There are **no hard and fast rules** to guide an AO ... as to when **the dictates of fairness** require the holding of an oral hearing. The case, (like others), must be decided on the circumstances pertaining, the nature of the enquiry being undertaken by the decision maker, the rules under which the decision maker is acting and the subject matter with which he is dealing and **account should also be taken as to whether an oral hearing was requested**” (Galvin v Minister for Social Welfare, Supreme Court 1977)*



1. Analyse the following information presented in the appeals' files:
 - Layout
 - Content
 - Is there anything missing?
2. Vet the appeal – Summary or Oral?
3. If it can be decided summarily would you allow or disallow? Why?

Time for each Case (2x)

15 min – Work in pairs

15 min – Share with the big group

Total time – 1 hour

Agenda

Part 4 – Researching Information Relating to an Appeal



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

**Part 4:
Researching
Information Relating
to an Appeal**

Part 5:
Conducting an
Oral Hearing

Part 6:
Making & Writing
Appeal Decisions

Part 7:
Managing Ongoing
Cases

Part 8:
Recap & Conclusion



The first port of call should be the SWAO Teamsite:

- Running consolidation of Social Welfare Acts and Regs & EU law circulars/guidelines
- Extensive appeals Reports Library with search facility by keyword
- Cases of Interest Section
- Court judgements
- Link to Decisions Advisory Office website
- Shortcut Links for AOs

..... and there is also an SWAO library for AO's in D'Olier House!



- Department of Social Protection Website (link to SW Acts/Regs)
<http://www.welfare.ie/en/Policy/Legislation/Pages/LegislationIndex.aspx>
- Oireachtas Website (Legislation/Oireachtas debates)
www.oireachtas.ie
- Irish Statute Law Website
<http://www.irishstatutebook.ie/home.html>
- Courts Service (recent court judgements)
<http://courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument>

EU Regulations

- **Department of Social Protection: EU Guide on Social Security** – very comprehensive guide to Regulations (EC) 883/2004 and 987/2009 in the context of Irish Social Welfare Legislation:

<http://www.welfare.ie/EN/Policy/EU/Euguide/Pages/euguideindex.aspx>

- **European Commission** – Employment, Social Affairs and Inclusion link to Decisions of the Administrative Commission on coordination of Social Security, E forms, SEDs (Structured Electronic Documents). These replace E forms)

<http://ec.europa.eu/social/main.jsp?langId=en&catId=868>

- **ECJ** (European Court of Justice) – Cases from 1953 (not all are relevant to social security but useful if you have a case reference.

<http://curia.europa.eu/en/content/juris/>

- **TRESS** – Training and Reporting on European Social Security. Contains a database on EU Regulation 1408/71 (and 574/72 which sets out the rules for implementation of Reg. 1408/71) and 883/2004 (and 987/2009 which sets out the rules for implementing Reg. 883/2004):

<http://www.tress-network.org/TRESSNEW/?jsessionid=1141991285688019281>

The appellant is a 24 year old man who had been in continuous receipt of JA since April 2012. His claim was subjected to review in April 2014 and, based on the information he provided during this review process, the Department decided that he had not established that he continued to be available for or genuinely seeking work.

Case 1

Topics Researched

- Availability
- Genuinely Seeking Work

Legislation - Section 141 (1) and Section 141(4) of the SW Consolidation Act 2005, as amended b .Articles 15 & 16, of S.I. 142 of 2007 incorporates the factors relevant in determining whether a person is available for and/or genuinely seeking work.

Sources Used

- Legislation link to running Consolidation Act/Regs on AO Teamsite
- AO Reports Library on AO | Teamsite
[**search in both cases by keyword**]
- Collaboration with AO colleagues

The appellant is a 34 year old single woman who had been refused OPFP on the grounds that she is cohabiting with the father of her two younger children. She denies cohabitation and claims that the father of her two younger children lives with his own father.

Case 2

Topics Researched

Legislation – Section 2 (1) SW(Cons) Act 2005 ,as amended by Sect 15 of the Social Welfare & Pensions Act 2010 (defines cohabitation)
-- Part 3, Chapter 7, Section 175 SW (Cons) Act 2005, as amended by Section 9(6) Social Welfare & Pensions Act 2011
S.I. 142/07
-- Art. 181 Information given in making claim
Similar appeal type cases in AO Reports Library

Sources Used

- Legislation link to running Consolidation Act/Regs on AO Teamsite
 - AO Reports Library on AO Teamsite
[**search in both cases by keyword**]
 - Collaboration with AO colleagues
- Civil Partnership and Certain Rights & Obligations of Cohabitant’s Act 2010, Sections 172 (1) & (2)

Agenda

Part 5 – Conducting an Oral Hearing



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

**Part 5:
Conducting an
Oral Hearing**

Part 6:
Making & Writing
Appeal Decisions

Part 7:
Managing Ongoing
Cases

Part 8:
Recap & Conclusion

- Prepare schedule for S&P Section
- Identify necessary attendees (appellant, DEASP witnesses, interpreter, etc.)
- Average 6 oral hearings per day /up to 24 cases per week
- Length of hearing depends on complexity of the case
- If there is a 2nd appeal from appellant – try to hear both to avoid duplication
- Consider needs of different appellants (location/times of hearing)
- Allow 2 days to prepare in advance of Oral Hearings

Read through the file in detail

- ☐ Prepare fully – be clear on applicable legislation (AO Teamsite)
- ☐ Take notes
- ☐ Identify contentions/gaps/conflicts in evidence
- ☐ Prepare list of possible topics

Populate initial outline Draft Decision

- ☐ Scheme/Appellant Name/Appeal number
- ☐ Question under appeal
- ☐ Background
- ☐ Governing Legislation

Double check your documents- appeal files/ notes

Stationery Supplies:

- Prepaid return envelopes
- Signage/ directions
- Compliment slips
- Legislation (relevant extract from Act/ Regs)
- Laptop/ USB key
- Bible/ copy of oath

Arrive in good time and check room an hour in advance

- Room set up (door signage/ directions to room/ assigned waiting area)
- Water/ tissues
- Adequate seating
- Take note of H&S aspects e.g. note room exits

Ensure that your mobile phone is on silent

- Control and manage proceedings
- Make procedure clear to all parties
- Make parties feel at ease
- Let hearing run smoothly but intervene if needs be
- Ensure parties are comfortable with all attendees
 - Note objections and rule upon them fairly
- Be courteous but firm
- Ensure hearing is not confrontational or aggressive
- Invite parties to present their case and ensure all voices heard
- Ensure all interventions are addressed through the chair/AO
- Ensure that only relevant evidence is given
- Control interventions/interruptions – one voice at a time
- Conduct hearing in an independent/ impartial manner

In opening the oral hearing **aim to put the appellant at ease** :

- Show people where to sit in the room (ensures appropriate placement of people in the room but also demonstrates that you are in control from the outset)
- Introduce yourself by name as the AO who will be hearing the appeal and explain that you are independent of the Department of Social Protection
- Introduce any witnesses by name and position, and explain why they have been called to attend
- If appellant is accompanied/represented clarify how you will engage with those attendees (Article 15(1) and (2)).
- Outline how you plan to conduct the hearing (i.e. informally but need to ensure all relevant evidence is presented and considered)
- Explain that:
 - You have been given the file / all papers related to the appeal
 - You are the person who will be making the decision
 - You are bound by law, and your function is to determine the question before you, taking account of all the evidence
 - You will make your decision on the basis of the evidence and this decision is generally **final and conclusive**. If requested, explain Sect 317/318

- Outline the decision under appeal, or ask DO/SWI to present their case if in attendance
- Invite appellant to outline appeal contentions
- Ensure all parties understand question at issue
- Clarify complex matters and explain legislation if necessary
- Endeavour to limit any unnecessary or protracted submissions
- Aim to ensure that appellant understands what is happening as hearing progresses (e.g. language/learning difficulties or DEASP acronyms)
- Ask relevant questions only
- Listen actively!
- Show attentiveness and consideration:
 - Bear in mind that experience may be daunting for appellant /matters at issue may be deeply personal
 - Take a break if appellant requires one

- Take contemporaneous notes -be as accurate as possible
- Maintain control of proceedings without appearing to dominate
- Summarise evidence for appellant and invite closing comments
- In closing appeal advise appellant as to what happens next:
 - you will make a decision and a letter will be issued advising them as to the outcome in approximately four to six weeks [keep up to speed on this timescale]
 - the file / appeal papers will be returned to DEASP who will also be notified of your decision for any follow-up action required
- In the case of adjournment give clear directions to all parties re next steps:
 - re-convene hearing (e.g. where interpreter needed)
 - refer to another Appeals Officer (e.g. conflict of interest for AO)
- Write the report of the oral hearing as soon as possible – even in outline form drawing from relevant documents and your contemporaneous notes



Tomorrow we will...

- ❖ Practice an oral hearing (some homework!)

And discuss the following topics:

- ❖ Making decisions and writing appeals reports

- ❖ Managing ongoing cases

- ❖ Recap and conclusion



MOCK ORAL HEARING

Role play

Agenda- Day 2

Part 6 – Making & Writing Appeal Decisions



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an
Oral Hearing

**Part 6:
Making & Writing
Appeal Decisions**

Part 7:
Managing Ongoing
Cases

Part 8:
Recap & Conclusion

- No person shall be a judge in his own cause (Bias) – fundamental principal
- The claimant/appellant is entitled to know the information upon which a decision has been made in relation to his or her case - *Kiely v. Minister for Social Welfare* [1971] IR 21; *State (Williams) v. Army Pension Board* [1983] IR 308
- He or she is entitled to see and comment on any reports or other documentation that may be relied on in coming to a decision on the case - *Kiely v. Minister for Social Welfare* [1971] IR 21; *Feldbrugge v. Netherlands*, 8 EHRR 425
- He or she is entitled to know the reasons for a decision to refuse the claim under appeal - *State (Creedon) v. Criminal Injuries Compensation Tribunal* [1988] IR 51; *Finlay in State v Criminal Injuries Compensation Tribunal* [1988] IR 51
- In coming to a decision on an appeal, the AO must come to a decision based on the evidence before him or her, and not material of which the claimant has no notice - *Kiely (No. 2)* [1977] IR 267
- AO should not introduce a new issue without notification to parties - *Galway Mayo Institute of Technology v Employment Appeals Tribunal* [2007] IEHC 210
- The AO must not take into account irrelevant matters - *State (Keller) v. Galway Co* [1958] IR 142

- However, an AO is entitled to draw reasonable inferences from the evidence before him or her - *Corcoran v Minister for Social Welfare* [1991] 2 IR 175
- The officer must not allow a set rule or policy, or another official or organization, to dictate the outcome of the appeal - *State (Kershaw) v. EHB* [1985] ILRM 235; *State (McLoughlin) v. EHB* [1986] IR 416; *Galvin v. Chief Appeals Officer* [1997] 3 IR 240
- A fair hearing does not mean that there must be an opportunity to be heard orally but have adequate notice of the case he has to meet and is given an opportunity to respond
- Issues to be considered with regard to an appellant's right to representation at the oral hearing (Article 15(2)):
 - The appellant may wish to be represented if the decision has adverse effect/penalty implications (eg €100k overpayment raised)
 - The ability/inability of the appellant to present their case

Question for Consideration

- In considering an appeal the Appeals Officer will normally confine their examination to the grounds for the disallowance as set out in the DO decision/DP determination. It is a rehearing of those grounds based on the relevant legislation and the evidence presented and **not a review of the DO/DP decision/determination.**

Evidence to be Considered

- In considering the question at issue, the Appeals Officer will have regard to **all relevant evidence** including the documentary material, the grounds of appeal including any documentation submitted and/or oral evidence at the hearing.

Application of Legislation

- The conditions underlying entitlement to benefit are contained in provisions of **social welfare legislation** and the Appeals Officer **must apply this legislation** to his/her findings of the facts in determining the question under appeal. Statutory interpretation can occur however in making findings of fact based on particular circumstances AOs should strive for consistency in their interpretation of the law (AO Team site & SWAO annual report case studies)
- Some issues may involve the application of other legislation **EU law** or **case law** – e.g. *whether a foreign divorce might be recognised as valid* or *whether the conditions of an employment are as an employee or self-employed person.*

Fair Procedure

- The AO in determining the appeal must ensure that fair procedures have been applied at every stage of the process

Decisions by public bodies, which impact on the lives of the general public, whatever their outcome, must adhere to a process which renders the decision fair, reasonable, legitimate and open to scrutiny

Each decision should be based on the facts as they currently exist, not what has happened in the past or is likely to happen in the future

The duty of an AO is laid upon him/ her by the Oireachtas and s/he is required to perform it freely and fairly (*McLaughlin v MSW [19580 IR 5]*)



What?

Evidence is defined as “That which tends to prove the existence or non existence of some fact”.

All the information available is evidence.

Evidence is used to find the facts of the case.

Why?

Evidence is needed for the simple reason that a decision cannot be made without it.

Evidence is the basis for accurate findings of fact

Without relevant evidence a proper conclusion cannot be reached

Evidence can be written or oral:

- The AO may admit any duly authenticated written statement as prima facie evidence:
 - “*Prima facie evidence*” means prima facie proof of an issue, the burden of proving which is upon the party giving that evidence. “*In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof*” - Kiely [1977]
- However, it appears that **written evidence should be outweighed** if a witness can give **credible oral evidence** contradicting the written statement – Kiely [1977]
 - “*Once the fact sought to be proved by the statement is controverted by probative evidence to the contrary, the statement ceases to be prima facie evidence of that fact. Therefore, it ceases to be admissible and the fact requires to be proved by oral, although not necessarily by sworn, testimony.*”

Direct- This is the best evidence upon which to base a decision

- Can be in writing (payslip, GP's letter, etc.)
- Oral admission of a fact is direct evidence

Hearsay- Reports by others, not directly observed

- Must have been investigated and appellant given opportunity to confirm/ refute/ comment

Anonymous Reports

- Simply a trigger for an investigation by Department
- Should never be on an appeal file

Indirect/ Circumstantial- Establishes the facts by inference only

- Needs to have been investigated and confirmed before it can be considered evidence

Inference cannot be made by the Department or the AO without the evidence to draw it from

- The AO should approach the appeal by considering the evidence in the context of the **governing legislation**, rather than DEASP guidelines (which are not binding). From that evidence, the facts of the case should be established. The AO then should decide on the basis of the **established facts**
- In the case of decisions relating to medical evidence, the evidence may include:
 - Evidence from the appellant or their GP on the application form
 - Supporting evidence provided by the appellant, their medical representative(s) or other persons on their behalf
 - The opinion of the Department's Medical Assessor only where there has been an in-person medical assessment

The weight to be given to each of these categories of evidence must be carefully considered but it has to be a matter for assessment by the AO concerned.

Objective

Independent

Impartial

Based on
Facts

Natural Justice

Burden of Proof- 'He who asserts must prove'

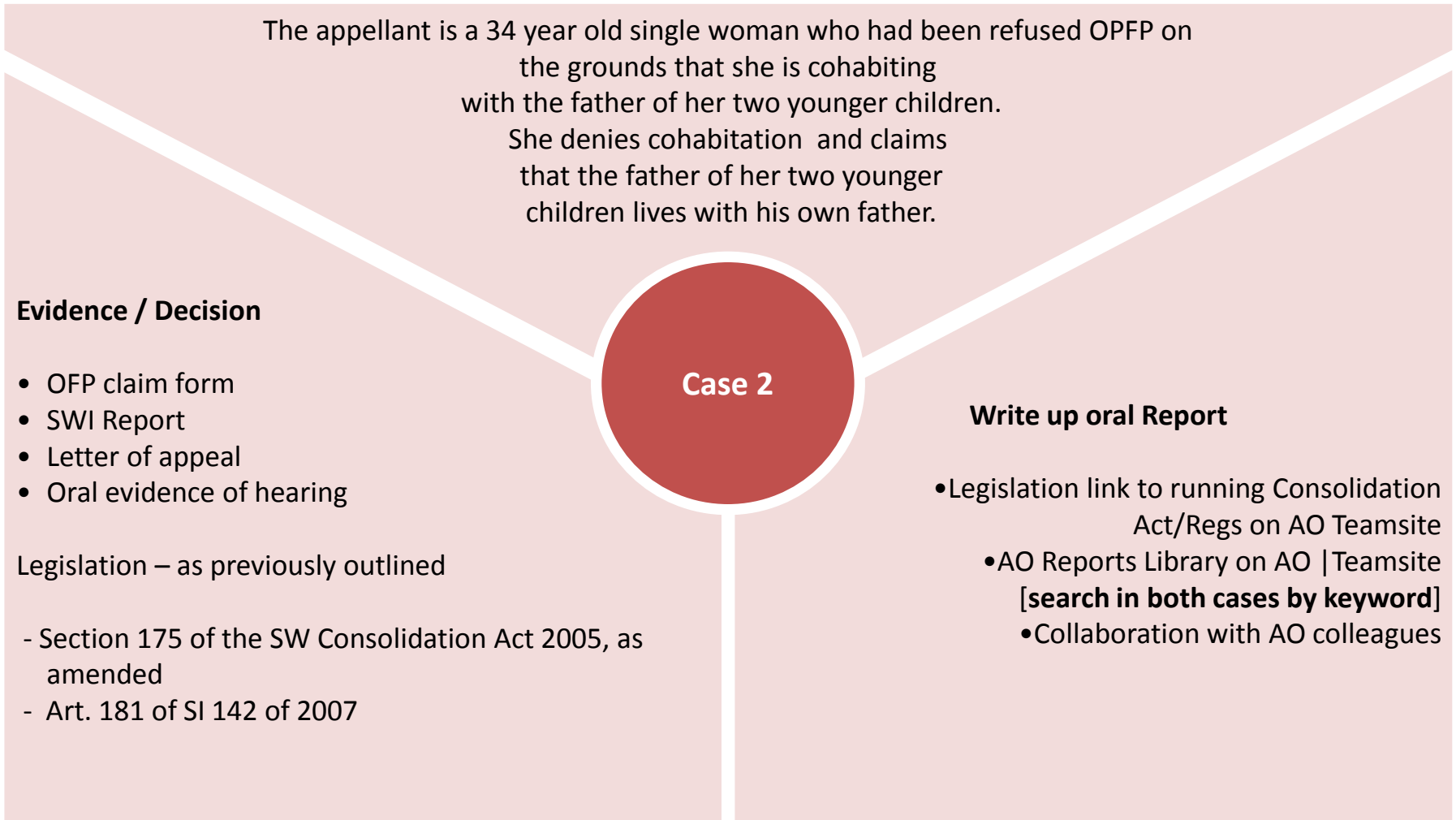
- **When a person applies** for a social welfare payment, the **burden of proof lies with them** to show that they meet the conditions of entitlement
- **When a claim is in payment and is subject to review** the **burden of proof shifts to the Department** who must have substantial proof that the change is appropriate
- **Natural justice** must have been applied by the Department
- A person cannot have been asked to provide that which was not in their power and **must have been allowed a reasonable time** to produce evidence requested

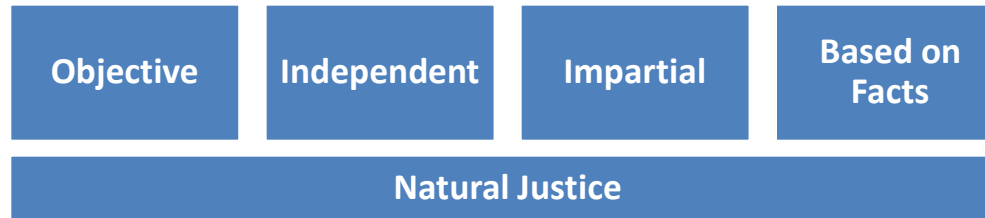
Standard of Proof

- In Civil law, the standard of proof generally applied is the '**balance of probabilities**' i.e. **asking whether something 'is more likely than not'** rather than 'beyond a reasonable doubt' which is the standard required in criminal law

Quality of Evidence

- Is it **Clear, Accurate, Complete, Consistent, Rational, Tainted, Credible, No Conflict**





From the evidence, the facts of the case should be established. The AO then should decide on the basis of **the relevant legislation, appellants case made** and the **established facts**, as per the evidence considered

In writing up SUMMARY / ORAL Appeal Decisions, AO's should :-

- Deal with all the material points of evidence and appellants contentions
- Show how the application of the law results in the decision you are giving
- Make clear whether the appeal is being allowed or not
 - AO's should give reasons for their decisions
 - Where an appeal is being disallowed, relevant factors relied upon should be clearly communicated

In writing both a summary decision & a decision following an oral hearing, the AO should:

- Clearly identify the question to be decided at the outset
- Identify a clear set of relevant findings of fact fairly drawn from the evidence
- Be aware of conflicting relevant evidence and explicitly identify the findings of fact on which the conclusion is based and reasons for the findings of fact
- Respond to the relevant submissions and arguments
- Decide what weight to attribute to any evidence and show clearly why this has been accepted or rejected
- Identify and apply appropriate law , showing how it has been applied to the facts
- Use plain language wherever possible and use technical and legal terminology only when necessary
- Set out clear and understandable reasoning which leads to and demonstrates a logical conclusion that resolves the issues

Record of appeal decision following oral hearing

- ❖ **Hearing date, venue and parties present**
- ❖ **Question under appeal** - should clearly outline question under appeal
- ❖ **Decision of the AO** - allowed/disallowed/partially allowed
- ❖ **Background** - outline the facts of case and summarise the evidence presented by the appellant/Department
- ❖ **Governing Legislation** - reference the legislation relevant to the appeal question
- ❖ **Evaluation of the evidence, conclusion & reason for decision**
 - What facts were considered to be determinative
 - The basis on which those facts were accepted and others may have been rejected
 - How the evidence is linked to the appeal question and the governing legislation

Good Practice

- ❖ Avoid simple conclusions without explanations
- ❖ AO develops the weight of evidence and the sequence of points considered in coming to their decision
- ❖ AO refers clearly to the evidence which is being accepted, or that which is rejected in reaching the conclusion in the case, as well as to the relevant legislation in determining the appeal
- ❖ AO needs to be able to state and defend why s/he finds the appellant's evidence not to be credible or convincing
- ❖ Remember to distinguish between tainted evidence and the rest of the evidence

Once the decision has been recorded on the appeals system (Team Site), AO returns the physical files to the Decisions Section along with signed decision

Decisions Section perform the following actions:

Return file/ AO decision to the scheme area

Issue appeal decision to the appellant

Notify any named representation for the appellant (where appropriate)

Return any Medical Assessor reports to MA section

Deal with any follow-on enquiries from appellants of the appeal decision

Review
Appeal
submission

Check if
any
information
is
outstanding

Liaise
via Corresp.
Section
If further
info
required

Research
legislation
etc

Summary
Or Oral?
Set up
Oral
Hearings/
Work on
Summary
decisions

Hold
hearings

Consider
evidence

Decide on
appeal

Write up
decision
&
Submit
on Team
Site

Print
decision etc
Return file
to Decisions
Section

Agenda

Part 7 – Managing Ongoing Cases



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an
Oral Hearing

Part 6:
Making & Writing
Appeal Decisions

**Part 7:
Managing Ongoing
Cases**

Part 8:
Recap & Conclusion

Review / Revised Decision

- Where appellant requests review of AO decision, it can be reviewed / revised by any AO or DCAO / CAO (Section 317/318)

Complex Cases

- May not get resolved in the 6 week cycle
- Consult where necessary

Waiting for Responses

Appeal will remain open until AO gets all documentation needed or until the Department confirm that the decision has been revised

Closed Cases

- Clarification questions, ongoing correspondence with appellant / Department / Representative / Legal etc.

Judicial Review/ Court Cases

- AO may have to defend their decision in the High Court

Revision by a Deciding Officer (Section 301(1)(b))

- Where the AO decision was to allow the appeal **and** new evidence comes to light since the AO decision that points to a change of circumstances a DO may revise the AO decision

Revision by an Appeals Officer (S. 317) or by Chief Appeals Officer (S. 318)

- An AO may at any time revise a decision of an AO in light of **new facts/evidence brought to his/her notice since date original decision was given which would render the original decision erroneous**
- An AO can revise any AO decision **if the AO decision was to allow appeal and** there has been a **relevant change of circumstances** which has come to notice since the original decision was given
- CAO may revise a decision of an AO at any time if it appears to her that the decision was **erroneous** by reason of a mistake as to the facts or the law

Review by Courts

- It is open to any appellant to appeal an AO decision to the High Court on a point of law or to seek a **judicial review** of a decision in the Courts if s/he feels that a decision is deficient for want of fairness of procedure. The courts, however, will not generally disturb a decision unless it is "plainly and unambiguously flying in the face of fundamental reason and common sense"

Agenda

Part 8 – Recap & Conclusion



Part 1: Introduction

Part 2:
The Appeals Process

Part 3:
Vetting an Appeal

Part 4:
Researching
Information Relating
to an Appeal

Part 5:
Conducting an
Oral Hearing

Part 6:
Making & Writing
Appeal Decisions

Part 7:
Managing Ongoing
Cases

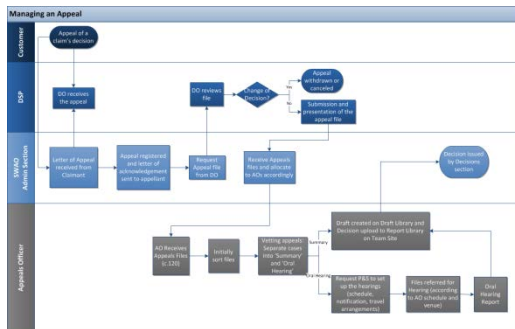
Part 8:
Recap & Conclusion

Recap and Conclusion

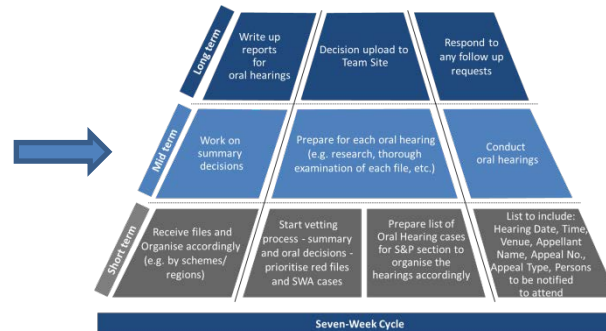
Recap



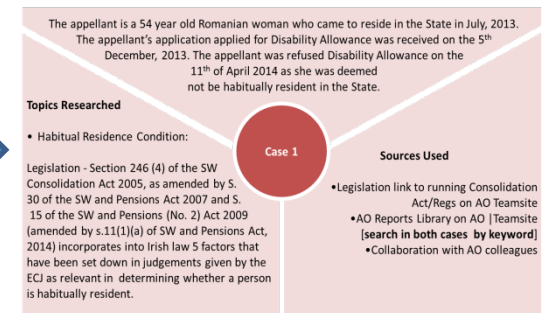
Lifecycle of an Appeal



Vetting an Appeal



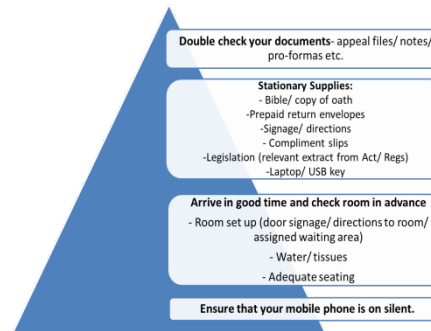
Research



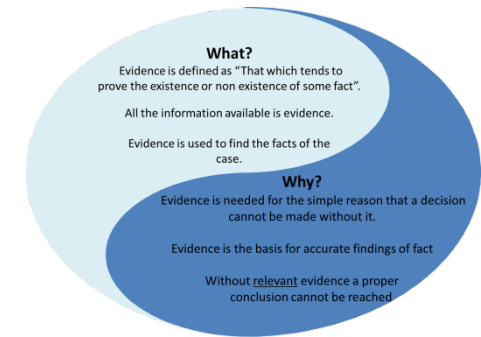
Conducting an Oral Hearing



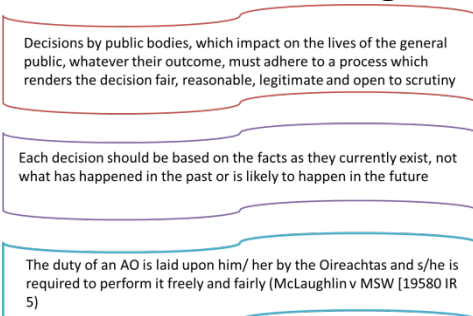
Oral Hearing Checklist



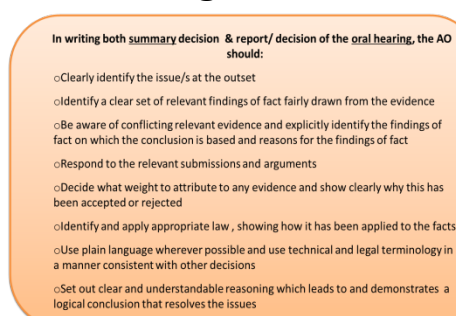
Evidence



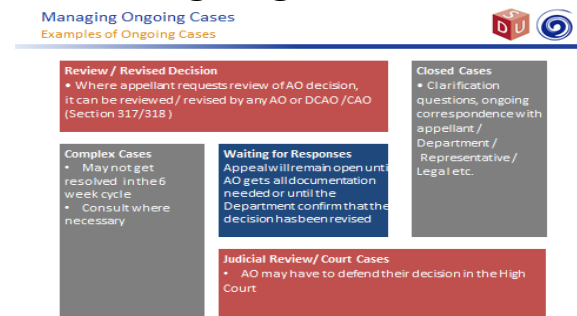
Decision Making



Writing Decisions



Ongoing Cases



Mission statement

“To provide and deliver an independent, accessible and fair welfare appeals service in a prompt and courteous manner”